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BILL DRAFTING MANUAL

1992



Montana Legislative Council

Published by
Montana Legislative Council
Room 138
State Capitol
Helena, MT 59620
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**Code Commissioner and
Director of Legal Services**

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Preface

The first Bill Drafting Manual was written by the Legislative Council staff during the 1960-61 interim to provide a uniform standard for bill drafting. Its main purpose was to provide the drafter with a reference source to the requirements of Senate and House rules, statutes, the Constitution, and case law, as well as suggestions on the mechanics, technique, and style of legislative drafting.

Our purpose remains the same. We direct your attention especially to the table of contents, the examples in the appendices, and the index. They can be very helpful in locating information pertinent to your needs.

Montana's Bill Drafting Manual is revised each interim in order to incorporate recent changes. We hope you find the manual useful.

Gregory J. Petesch
Code Commissioner and
Director of Legal Services

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Bill Drafting Generally

1-1. Policy and the Bill Drafter.

Bills may be drafted for various persons and groups by bill drafters. Some bills are drafted by the Legislative Council staff at the request of a legislator or committee, some are drafted by personnel of departments of state government, and some are drafted by counsel retained by private individuals or groups. The drafter's function is to translate the objectives and policies of the person or group for whom the bill is drafted into clear, concise language. The drafter may not express personal thoughts or promote self-interest but must remain an impartial technician. To do otherwise is to risk drafting legislation containing ideas or implications not intended by the person for whom the bill is drafted.

1-2. Constitutionality.

A bill is, in essence, a proposed statute. A statute is the vehicle by which the Legislature exercises its lawmaking power. The United States and Montana Constitutions are the fundamental law upon which our government is based, and any statute enacted by the Legislature must conform to them. Aside from the constraints of physical reality, the Legislature's lawmaking power is limited only by these two Constitutions and by federal statutes. Under the Supremacy Clause (Art. VI) of the U.S. Constitution, any act of Congress that is not itself in violation of the U.S. Constitution may not be contravened by a state legislature. Thousands of volumes have been written on the subject of constitutionality of statutes. However, the purpose of this manual is not to provide an exhaustive discussion of these problems as they may be encountered in bill drafting but to emphasize that constitutionality is a paramount consideration and to bring to the reader's attention a few of the more frequently recurring problems. At a minimum, all bill drafters should periodically review the entire Montana Constitution, which contains many of the same provisions as the U.S. Constitution, and then refresh their memories by referring to the Constitutions

whenever a potential problem surfaces. The bill drafter is in a unique position with relation to the public sector in general and the legal community in particular because the drafter has the opportunity, with the concurrence of the bill requestor, to forestall constitutional difficulties before they cause confusion, litigation, and expense. Frequently, a bill can be drafted to avoid an inherent constitutional problem while still accomplishing the basic goals of the requestor. Many bill drafting requests arise from a particular problem as perceived by an individual or relatively small interest group. The legislator/requestor, who is solicited to provide a legislative remedy, often wishes only to address the particular problem with a minimum of governmental expense and interference. For these reasons, problems involving equal protection of the law (Art. II, sec. 4, Mont. Const.) and special legislation (Art. V, sec. 12, Mont. Const.) tend to recur. Underlying these provisions is the basic precept that state policy should be made to apply evenhandedly to all persons. These provisions, however, are not absolute prohibitions of all forms of discrimination. The courts will apply various standards under these provisions, depending upon the purpose of the statute and its relationship to the type of discrimination proposed, whether the discrimination involves a suspect classification (e.g., race), whether a fundamental right (e.g., free speech) is adversely affected, or upon other considerations. Suffice it to say that whenever a requested bill draft would, if passed and approved, confer a benefit or impose a burden on certain individuals, groups, or classes of persons to the exclusion of others, the drafter should consider the constitutional implications.

Because the Legislature is only in session periodically and because of the demands of an increasingly complex and technical society, the Legislature sometimes finds it appropriate to delegate some of its power to another entity. Under the separation of powers doctrine, no branch of government may exercise the powers properly belonging to another (Art. III, sec. 1, Mont. Const.). The Legislature may provide for Executive Branch discretion in carrying out the law only if it provides sufficient statutory standards and criteria to guide the executive agency (*In re Gate City S&L Ass'n*, 182 M 361, 597 P2d 84 (1979), for insufficient guidelines, and *Grossman v. St.*, 209 M 427, 682 P2d 1319, 41 St. Rep. 804 (1984), for sufficient guidelines). Such guidance is particularly important in the context of administrative rulemaking through which the power to make legislative rules having the force of law may be delegated. (See discussion of bills granting rulemaking power and statements of intent in sections 6-2 and 6-3.) On the other hand, legislatures generally may not interfere with the Executive Branch in the purely administrative aspects of carrying out the law, such as by imposing a hiring freeze or otherwise

making specific staffing and resource allocation decisions (*In re Opinion of the Justices to the Governor*, 341 NE 2d 354 (1976); *Anderson v. Lamm*, 195 Colo. 437, 579 P2d 620 (1978)). Further, the Legislature, within its sphere of power, must act as an entire body and may not delegate final decisionmaking authority to a legislative committee (*Judge v. Legislative Fin. Comm.*, 168 M 470, 543 P2d 1317 (1975)).

Legislative power and responsibility may not be abdicated to private organizations (*St. v. Holland*, 37 M 393, 96 P 719 (1908)) or to the federal government (*Lee v. St.*, 195 M 1, 635 P2d 1282, 38 St. Rep. 1729 (1981), rehearing denied, 38 St. Rep. 1931 (1981)). It is a common temptation to simply incorporate the regulations of a private organization or federal laws or regulations into the Montana law by reference. There is no infirmity in incorporating such laws or regulations as they exist at the time of the Montana enactment. The problem lies in referentially incorporating future changes in those laws or regulations (i.e., as they may be amended from time to time) because this has the effect of allowing an entity other than the state Legislature to amend Montana law. However, in *Lee*, the Montana Supreme Court noted that a "temporary emergency" power in the Attorney General to change the highway speed limit between legislative sessions to avoid loss of federal funds might be permissible. The bill drafter should avoid referential incorporation of laws or regulations "as amended"; further, when referentially incorporating such laws or regulations as they exist at the time of enactment, this incorporation should be expressly stated (e.g., "Eligibility criteria are those provided for in 35 U.S.C. 405, as that statute reads on [the effective date of this act]."). For a statutory treatment of the problem of incorporation by reference in the administrative rulemaking context, see section 2-4-307, MCA. Incorporation by reference of other MCA sections does not present constitutional problems and can often be used to good advantage. (See Internal References, section 2-18.)

For discussion of the constitutional provision dealing with bill titles, see section 4-4.

1-3. Research and Drafting.

Research and organizing are steps inherent in all writing. Bill drafting is no exception.

Occasionally a drafter will have the facts and law sufficiently well in mind so that drafting can be done with little research. However, the precision and complexity of the law usually require research.

The extent of research required depends on the complexity of the drafting problem. The drafter must define that problem and then determine how to achieve the purpose of the bill.

Analysis of the problem to be solved will enable the drafter to determine the sources to consult for more information. Sources of information that must be considered by the drafter include the state and federal Constitutions (see Constitutionality, section 1-2); existing federal, state, or local statutes; case law; pending law; and applicable federal, state, or local regulations.

The importance of reviewing existing state statutes in the area of law to which the draft relates cannot be overemphasized. Omission of this step often results in conflicts, overlaps, or redundancies, thus creating more problems than are solved. Therefore, a determination as to which existing statutes, if any, should be repealed or amended must be made with regard to every bill draft. (See Use of Internal Reference Report, section 1-7.)

Research preparation must be as thorough as time allows. A thorough understanding of the legal and practical factors involved in a bill is necessary to ensure production of a bill that will accomplish the purpose of its proponent. The drafter has a professional obligation to advise the proponent of possible legal or practical problems of which the drafter is aware.

No one can tell the drafter when enough research is done. The drafter must determine when to stop gathering information and start writing.

1-4. Organization.

Organize the information at hand. Develop an outline that places the elements of the problem in a logical pattern. A bill for only a simple amendment to existing law will present no organizational problem. A major new body of law will require considerable effort to guarantee clarity. Some bill parts are so common that their placement in a bill has been standardized. A drafter must be familiar with the standard bill format discussed in Chapter 4 of this manual before beginning to organize the bill.

Begin to draft the bill when the work is outlined. Rewrite the bill as often as is necessary to achieve clarity, coherence, and unity. Revise the organization of the bill if revision contributes to clarity.

1-5. Timesavers.

There are several timesavers that may be used in preparing a draft bill.

(1) Each section of a long bill may be placed on a separate sheet of paper until a cohesive draft is prepared. Sections can then be shuffled and rearranged with ease as research and construction proceed. Sections should not be numbered and internal references should not be filled in until the final arrangement is reached.

(2) Copies of any current statutes proposed for amendment may be taped to draft pages and deletions and new language indicated in red pen on the copy. The Legislative Council staff prefers that amendments be submitted to it in this cut-and-paste form, with all deletions and additions clearly indicated, unless the statute text is downloaded from a data base supplied by the Legislative Council. If electronic data processing is used, new material must be shown as underlined and deleted material must be shown as stricken.

(3) A list of the introductory clauses used when amending or repealing sections has been provided to Legislative Council data entry operators so that the drafter need not write the entire clause each time it is needed. For instance, the drafter may merely write "amend 1-1-101" and the operator will enter the proper introductory amending clause: "**Section 1.** Section 1-1-101, MCA, is amended to read:".

(4) Material that is completely new and that does not amend existing code sections may be submitted on 5 1/4" or 3 1/2" DOS formatted diskettes. The Legislative Council uses WordPerfect word processing software in bill drafting. However, files from some other word processing file formats can be converted to WordPerfect. (If a drafter has a question concerning file compatibility, contact the Council Legislative Services Division.)

Proposed amendments to current statutes should be submitted in the cut-and-paste form suggested in (2) above.

Bill drafts may also be sent to the Council via telefacsimile transmission. The phone number for the Council telefacsimile machine is 444-3036.

(5) At the end of the bill draft, write "End" so that it will be clear that it is the end of the bill. Often there are copies of background information, preliminary drafts, and/or other assorted documents attached. Those handling the bill should not have to spend time sorting through this material to determine where the bill ends.

1-6. Drafting Aids.

The following serve as aids in drafting bills:

(1) Other Montana statutes. Without creating a potential conflict or overlap, a bill may be patterned after existing law. For example, when drafting a bill creating a board to license a particular occupation, the drafter should examine various licensing laws for a suitable model. The drafter, however, must be very careful to make all necessary adjustments to such a model. Not only is it a rare case that allows near verbatim use of existing law in a bill draft, but often existing statutes are poorly organized and unclearly worded; this is particularly true of very old statutes.

(2) Similarly, bills introduced in past sessions may be helpful. The subject indexes of Senate and House journals or the *History and Final Status* may be used to determine whether a bill on a particular topic was introduced in that session and, if so, the bill's number. The Legislative Council keeps at least one copy of bills introduced in the most recent legislative session. The office of the Secretary of State has copies of all introduced bills for all past sessions.

(3) The Bill Draft Requests by Subject printed report and the on-line system screens which display Bill Draft Requests by Subject and Introduced Bills by Subject can be referenced to see if an identical or similar bill draft/bill has been requested/introduced. Each of these information sources groups drafts/bills under a specific subject. The short titles of the drafts/bills can then be checked to help detect similar bills. These services are available in early November.

(4) Comparison of laws of other states on the same subject is usually very beneficial. In following a law from another state, the drafter must be very careful to make the bill language conform to Montana law and to good drafting practice and style. (Be especially careful to check the Constitutions of both states. What is constitutional in another state may not be in Montana.) If the draft submitted to the Legislative Council is drawn from another state, a note should be attached so indicating and providing citations; if the bill becomes law, this information will be passed on to MCA subscribers by way of a "Source" compiler's comment included in the MCA Annotations.

(5) A list of uniform and model acts and *Suggested State Legislation* should be checked to see if a uniform act (which is intended to be followed exactly in substance), a model act, or suggested act could be used as a guide. If not readily apparent from the draft, a note indicating the source of the draft should be attached as in (4) above.

(6) If time permits, the drafter should consult with experts in the field affected. If the bill affects a governmental or state agency, a conference or discussion with an appropriate staff member from the agency is very helpful. If the proponent permits, a draft of the proposal should be sent to the agency for comment.

(7) See Chapter 9 for a list of constitutional and statutory provisions and legislative rules relating to bills.

1-7. Use of Internal Reference Report.

When amending or repealing a section, the drafter must check the *Internal Reference Report*. (By using its computer search facilities, the Council has compiled this list, which contains each code section number that is referred to by another code section. The Council now uses an online version of the *Internal Reference Report* in which the internal references for each amended code section are stored with the section.)

EXAMPLE 1: The internal reference list for section 30-4-105, MCA, appears as follows:

REFERENCES TO SECTION 30-4-105
30-3-102 [4] 30-4-104 [6] 30-8-102

In the example above, 30-4-105 appears four times in section 30-3-102 as indicated by "[4]" following "30-3-102". Likewise, 30-4-105 appears six times in section 30-4-104. Section 30-4-105 appears only once in 30-8-102.

When amending 30-4-105, the drafter must read 30-3-102, 30-4-104, and 30-8-102 to determine whether the amendment to 30-4-105 affects those sections. If a drafter is repealing 30-4-105, it is mandatory that each of those sections referring to 30-4-105 be amended to delete the reference and make any other necessary modifications.

EXAMPLE 2: The internal reference list for section 1-5-102, MCA, appears as follows:

REFERENCES TO SECTION 1-5-102
1-5-104*

In the example above, the asterisk indicates that 1-5-102 does not actually appear in section 1-5-104 but is included in a larger reference, such as 1-5-101 through 1-5-103. If 1-5-102 is repealed or if it is amended so that the reference is no longer accurate, "1-5-101 through 1-5-103" must be amended to read "1-5-101 and 1-5-103".

The drafter must be extremely careful when renumbering subsections within a section. For instance, if the drafter changes 1-1-101(2)(b) to 1-1-101(3)(c), all references in other statutes to 1-1-101(2)(b) are rendered erroneous; these references may be found by use of the *Internal Reference Report*. When renumbering subsections within a section, the entire section must be read carefully for references to subsections, such as "subsection (3)". Such references are not listed in the *Internal Reference Report* because the entire section number does not appear in the reference; only the subsection number appears.

Copies of the *Internal Reference Report* are available from the Legislative Council.

1-8. Bill Drafter Checklist.

Appendix S and the "Bill Drafting Request" form (available upon request from the Legislative Council) provide a "Bill Drafter Checklist" that will aid the drafter in ensuring that essential matters have been considered. The completed checklist will also provide the Legislative Council and the Legislature with useful information. If the drafter does not have a "Bill Drafting Request" form, the checklist in Appendix S should be copied, filled out, and attached to any bill draft submitted to the Legislative Council. Each item on the list calls for a "yes", "no", or "N/A" (not applicable) entry.

Chapter 2

Style and Language

2-1. Introduction.

Bills should be written in a simple, clear, and direct style, phrased for the common reader as well as for the political or legal expert.

A poorly drafted, ambiguous bill will waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and likely fail to accomplish the purpose of the requestor. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject.

If wording in a bill has to be paraphrased to make it intelligible to the layman, it needs revising. In Montana, the common-law tradition has manifested itself in the timeworn, nonessential phrases and rhetorical flourishes found in our older legislative enactments. The suggestions contained in this chapter are designed to help the drafter avoid the most common faults in style and language evident in some of our present law.

As authority for basic rules of writing, the Legislative Council uses the latest edition of the *United States Government Printing Office Style Manual* and the *Gregg Reference Manual, Sixth Edition*, by William A. Sabin. Compounding of words is done according to the *Style Manual*.

Generally, the ordinary rules of grammar apply to legislative writing; however, in a few instances a departure from common usage is suggested. For consistency, when a code section is amended, added language should be written to "match" existing language.

2-2. Word Choice Generally.

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general:

- (1) never use a long word if a short one will do;
- (2) if it is possible to omit a word and preserve the desired meaning, always omit it; and
- (3) never use a foreign phrase, a scientific word, or a jargon word if there is an everyday English equivalent.

Remember that the bill must be both precise and clear. While striving for unstilted, clear, natural expression, the drafter must avoid becoming conversational. In conversation, the speaker reserves the right to explain what is meant. No such right is granted the drafter. The entire meaning of a bill could be determined by the choice of one key word, so words must be chosen carefully.

An example of the kind of word choice to avoid is the conversational verb construct. This verb form appears most regularly as the combination of an accepted verbal base ("speed") and an accepted preposition ("up"). The resulting formulation ("speed up") is a conversational term unacceptable in bill drafting.

2-3. Tense.

Use the present tense. The law speaks in the present, and each law is designed to give a rule for the continuing present. The present tense is a simple and natural form of expression. "The present tense includes the future as well as the present." (See section 1-2-105(1), MCA.)

preferred

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether guilt is satisfactorily shown, the defendant is entitled to an acquittal. (*Present tense*)

avoid

A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether guilt shall be satisfactorily shown, the defendant shall be entitled to an acquittal. (*Future tense*)

2-4. Mood.

Use the indicative mood. The drafter should avoid using the false imperative. The word "shall" should not be used to state a legal result or fact.

preferred The term "commission" means the water commission.

avoid The term "commission" shall mean the water commission.

preferred A person who violates this act is guilty of a misdemeanor.

avoid A person who violates this act shall be guilty of a misdemeanor.

However, the word "shall" should be used in mandatory statutes requiring certain acts. Exceptions to this rule are discussed below.

2-5. Shall, Must, and May.**Shall**

Use shall when imposing a duty on a person or entity. (*Active*)
(See exception in section 4-17.)

The licensee (department, judge, court) shall give the debtor a copy of the signed contract.

Must

Use must when the subject is a thing rather than a person or entity. (*Passive*)

The contract must contain two signatures.

Use must when the subject is a person or entity that is acted upon. (*Passive*)

The judge must receive the application by the deadline.

Use must to express requirements about what a person or an entity must be rather than what a person or entity must do.

A candidate must be a resident of the county.

May

Use may to confer a discretionary power, privilege, or right.

The applicant may renew the application.

May not

Use may not to express a prohibition.

Use may not if the verb it qualifies is in the active voice.

The applicant may not submit more than one application.

Avoid using will, should, and ought.

<i>preferred</i>	The applicant must be an adult.
------------------	---------------------------------

<i>avoid</i>	The applicant shall be an adult.
--------------	----------------------------------

<i>preferred</i>	The applicant may not be a convicted embezzler.
------------------	-------------------------------------------------

<i>avoid</i>	The applicant shall not be a convicted embezzler.
--------------	---------------------------------------------------

<i>preferred</i>	The information must be set forth in the application.
------------------	-------------------------------------------------------

<i>avoid</i>	The information shall be set forth in the application.
--------------	--------------------------------------------------------

<i>preferred</i>	The application must contain the applicant's name.
------------------	----------------------------------------------------

<i>avoid</i>	The application shall contain the applicant's name.
--------------	-----------------------------------------------------

When qualifying a verb in the active voice, "shall" is used as mandatory and "may not" or "may only" as prohibitory.

<i>preferred</i>	The applicant shall sign the application.
------------------	-------------------------------------------

<i>avoid</i>	The applicant must sign the application.
<i>preferred</i>	The applicant may not submit more than one application.
<i>preferred</i>	The applicant may submit only one application.
<i>avoid</i>	The applicant must not submit more than one application.
<i>avoid</i>	The applicant shall not submit more than one application.

Whenever possible, use "shall" only in an imperative or mandatory sense and "may" in a permissive sense. When a right, privilege, or power is conferred, "may" should be used.

If the power conferred on a public official might be construed by the courts as a duty, the word "may" should be followed by words such as "in the official's discretion". The Montana Supreme Court in some instances has given a mandatory meaning to the word "may" (*State ex rel. Griffin v. Greene*, 104 M 460; *Hansen v. Havre*, 112 M 207; *Bascom v. Carpenter*, 126 M 129, 135, 136). "Where a statute directs that a thing may be done in one manner it ordinarily implies that it shall not be done in any other manner." (*Fletcher v. Paige*, 124 M 114, 118)

Do not use "shall" to confer a right because that implies a duty to enjoy the right.

<i>preferred</i>	The officer is entitled to an annual salary of \$21,000.
<i>preferred</i>	The annual salary is \$21,000.
<i>avoid</i>	The officer shall receive an annual salary of \$21,000.

Do not use a negative subject with an affirmative "shall".

<i>preferred</i>	A person may not
<i>avoid</i>	No person shall

<i>preferred</i>	The person may not
<i>avoid</i>	The person shall not
<i>preferred</i>	Only the governor may
<i>avoid</i>	Only the governor shall

2-6. Negatives.

"Nor" may be used alone as a conjunction or with "neither".

Do not use "nor" in the same clause with any other negative; use "or" instead.

<i>correct</i>	There are no pens or pencils in the storeroom.
<i>incorrect</i>	There are no pens <i>nor</i> pencils in the storeroom.

2-7. Voice.

Whenever possible, draft in the active voice instead of the passive.

<i>preferred</i>	The board shall appoint a director. (<i>Active</i>)
<i>avoid</i>	A director must be appointed by the board. (<i>Passive</i>)

The active voice gives the agent, the doer, its logical position before the verb.

2-8. Number.

Use the singular instead of the plural when possible. The singular includes the plural. (See section 1-2-105(3), MCA.)

<i>preferred</i>	A defendant in a criminal action is presumed innocent until the contrary is proved. (<i>Singular</i>)
<i>avoid</i>	Defendants in criminal actions are presumed innocent until the contrary is proved. (<i>Plural</i>)

2-9. Articles and Demonstrative Adjectives.

"A person who violates" is preferred to "any person who violates", "each person who violates", or "all persons who violate". Consistent use of the articles "a" or "an" results in smoother writing and more precise expression.

There are phrases that require the indefinite article to be omitted, especially after a negative. The negative supersedes the article by including it. An example is "No more expeditious way can be found", not "No more expeditious a way". The extra article should always be avoided, such as in "a half an hour". "Half an hour" or "a half hour" is correct.

"Such" or "said", as in "such person" or "said board", should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board", "an institution", "a person", "these laws", etc., or by employing the appropriate pronoun, such as "it". However, occasionally "such" may be needed to identify the thing to which it refers and should be used if necessary to avoid ambiguity.

2-10. Pronouns.

Use a pronoun only if its antecedent is unmistakable. A pronoun must agree with its antecedent (the word for which the pronoun stands) in number and person.

Use a plural pronoun when the antecedent consists of two nouns joined by "and" and a singular pronoun when the antecedent consists of two singular nouns joined by "or" or "nor". When "or" or "nor" joins a singular noun and a plural noun, a pronoun should agree in number with the nearer noun. However, strict application of this rule can distort meaning, so it is usually best to try to make the construction plural.

avoid

The parents or guardian of a person alleged to be developmentally disabled has the right to have the person examined by a professional person of his choice ("*his*" supposedly refers to "guardian" but could also refer to the developmentally disabled person).

preferred

The parents or guardians of a person alleged to be developmentally disabled have the right to have the person examined by a professional person of their choice.

2-11. Gender.

The 1991 Legislature considered Senate Joint Resolution No. 32 and House Resolution No. 4 requesting that the Legislative Council amend the *Bill Drafting Manual* and revise bill drafting standards to strengthen the use of gender-neutral terms and requesting that those standards be used in all future bill drafts. Although the resolutions did not pass, the Legislative Council has adopted a policy that all future bills be drafted using gender-neutral terms.

Use gender-neutral terms when it can be done without artificiality. For example, in referring to a person who writes a statute, refer to the "drafter" not the "draftsman". An example of this type of gender neutrality can be found in the Workers' Compensation Act, in which the term "workers' compensation" was formerly referred to as "workmen's compensation". Creating an artificial gender-neutral term is unacceptable. Referring to a presiding officer as a "chairperson" is an example of the use of an artificial designation. Use "presiding officer" instead.

Do not use gender-based pronouns. There are two easy methods that the drafter may employ to avoid using gender-based pronouns. The first method omits the use of the pronoun. For example, instead of saying "A board member is entitled to \$50 for each day he attends a board meeting", say "A board member is entitled to \$50 for each day of attendance at a board meeting". The second method is to repeat the noun instead of the pronoun. For example, instead of saying "If the director determines that the plan does not meet statutory requirements, he shall adopt a temporary plan", say "If the director determines that the plan does not meet statutory requirements, the director shall adopt a temporary plan".

A third method of avoiding gender-based pronouns is to use the gender-neutral pronoun "it" when referring to a legal entity, such as a corporation, partnership, or company. This method can be used only if the antecedent is not a human.

The use of a combination of gender-specific pronouns is not an acceptable method of using gender-neutral language. For example, a drafter may not use "he or she", "his or her", or "he/she".

2-12. Redundant Adjectives and Adverbs.

Avoid adjectives such as "real", "true", and "actual" and adverbs such as "duly" and "properly". Since these ideas are normally implied, expressing them in some instances creates doubt that they are implied elsewhere. (Reed Dickerson, *Legislative Drafting*, page 87.)

preferred

The applicant shall write the applicant's age in the appropriate blank.

avoid

The applicant shall write the applicant's actual age in the appropriate blank.

2-13. Consistency.

To avoid confusion, the drafter must also be consistent in word usage. For instance, if the drafter uses "employee" in one section, "worker" should not be used in another section merely for the sake of literary variety. ("Poetic licenses" are never issued to bill drafters.) Also, the drafter should not use the same word to denote different things.

2-14. Provisos.

Provisos are clauses introduced by "provided, however", "provided that", "provided further", and "provided always" and properly should be used, if at all, only for introducing exceptions or qualifications to the preceding clause. In fact, they are often used improperly to introduce a new idea or a separate statement not necessarily connected with the preceding clause.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. Little, if any, significance is given to the word "provided". It must be defined by the court before it can be interpreted. "The word 'provided', when used in a legislative enactment, may create a condition, limitation, or exception to the Act itself, or it may be used merely as a conjunction meaning 'and' or 'before', and as to what sense the word was used must be determined from the context of the Act." (*St. v. Bruce*, 104 M 500, 516)

It is best to avoid provisos altogether. Introduce an exception or limitation with "except that", "but", or "however" or, better yet, simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

2-15. The Exception.

The exception is used to exempt something from the application of the law and should be stated precisely in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by

the rule. If there is a simple exception to the rule, the exception may be placed at the end of the rule.

- A license must be obtained by each person except a person:
- (1) 65 years of age or older;
 - (2) who has resided in the state for less than 1 year; and
 - (3) who

The preferred construction is to place the exception in a separate subsection and incorporate it by reference into the subsection stating the rule.

- (1) Except as provided in subsection (2), the board may
- (2) (This act) does not apply to

2-16. Use of "That" or "Which".

The word "that" begins a restrictive clause that:

- (1) restricts or limits or describes and defines the word(s) modified; and
- (2) is necessary to identify the word(s) modified.

The meaning of the sentence is not complete without the "that" clause. The clause is not parenthetical, but vital, so commas should not be used to enclose the clause.

A fence that conforms to 81-4-101 is a legal fence.

The word "which" begins a nonrestrictive clause that:

- (1) does not restrict the word(s) modified; and
- (2) gives additional, supplemental, or descriptive information about the word(s) modified.

The meaning of the sentence is complete without the "which" clause, so commas should be used to enclose the clause.

A fence, which may be a legal fence according to 81-4-101, must be built within 30 days after receiving the permit.

The term "which" is relatively uncommon in good bill drafting because nonessential information is usually inappropriate for statutory language.

2-17. If, When, Where, or Whenever.

The word "where" denotes place only.

If the application of a provision of an act is limited by the single occurrence of a condition that may never occur, use "if" to introduce the condition, not "when" or "where".

If the suspect resists arrest, the officer may use force to subdue the suspect.

If the condition may occur more than once with respect to the object to which it applies, use "whenever", not "if", "when", or "where".

Whenever the officer receives a call, the time must be noted in the officer's report.

If the condition is certain to occur, use "when", not "if", "where", or "whenever".

When the statute takes effect, all pending proceedings must be dismissed.

2-18. Internal References.

Prior to 1979, creation of internal references to other sections, parts, or chapters of the Code was discouraged in bill drafting because of the rule of *Gustafson v. Hammond Irrigation District*, 87 M 217, 287 P 640. In *Gustafson*, the court held that reference to a statute is as that statute existed at the time of its adoption and subsequent repeal or modification of the statute does not affect the reference to the statute in another statute. This rule had the effect of requiring the statutory researcher to trace through the Session Laws to determine when each internal reference was created and how the referenced section read at that time. At the request of the Code Commissioner, the 1979 Legislature amended section 1-2-108, MCA, to add a subsection (2) reversing the *Gustafson* rule. The use of internal references is, therefore, no longer flatly discouraged and can often be used to provide brevity. However, see *St. v. Conrad*, 39 St. Rep. 680, for discussion of the applicability of this statute to criminal matters involving retroactive application of an internal reference. (Note that the retroactivity issue was resolved by 1983 amendment subsequent to *Conrad*.) Avoid overusing internal references because it is difficult to comprehend a section of the law when it has to be read together with many other sections. For discussion of related issues, see section 2-19 below.

2-19. Use of "This Act".

Use of the words "this act" should be avoided except in non-codified sections (see section 4-2). As discovered during the recodification process, "this act" often creates a problem because the word "act" must be changed to an appropriate term, such as "title", "chapter", "part", or "section". References to "this act" may be avoided by substituting references to specific bill sections that are permanent and, therefore, will be codified (e.g., "[sections 1 through 24]" when sections 25 and 26 are a repealer and an effective date).

It is particularly important to avoid use of "this act" if a bill contains an amendment to existing MCA sections because technically the act includes only the deletions and/or additions to the amended MCA sections and not the remainder of those sections. Therefore, use of "this act" will cause confusion concerning its specific reference and present difficulties in changing "this act" to an MCA reference during codification. In such cases, specific references (whether to the MCA sections being amended, other MCA sections, parts, or chapters, new bill sections, or any appropriate combination thereof) must be substituted for "this act". For the same reason, when referring to an MCA section that is being amended, reference must be made to the MCA section number, not the bill section number; to refer to the bill section is to refer only to the amendment, which creates ambiguity and difficulty in codification.

This admonition does not apply to use of "this act" in temporary sections that will not be codified, such as effective date and transition sections.

2-20. Words to Be Avoided.

The left-hand column of the following list includes some words and phrases that should be avoided unless there are special reasons to the contrary. Some are flowery, some are archaic, and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those that the average reader understands more readily.

Avoid	Use
absolutely null and void and of no effect	void
aforesaid; aforementioned; beforementioned	the; that; those; (see "hereinafter")
afforded or accorded	given

Avoid

and/or
 any and all
 as (in clauses of reason)
 at such time as
 at the time of death
 attorney- and counselor-at-law
 be and the same is hereby
 bonds, notes, checks, drafts,
 and other evidences of in-
 debtedness
 bring an action
 carry out
 constitute and appoint
 deal with
 deem
 does not operate to
 due to
 during such time as
 during the course of
 each and all
 employ (meaning to use)
 enter into a contract with
 every person; all persons
 evidence, documentary or
 otherwise
 evince
 examine witnesses and hear
 testimony
 fail, refuse, or neglect
 feasible
 formulate
 for the duration of

Use

either X or Y or both of them;
 X and Y or either of them
 (either word)
 because; since
 when; whenever
 when the person dies
 attorney
 is
 evidence of indebtedness

 sue
 execute; complete; administer
 appoint
 address; conduct
 consider
 does not
 because
 while
 during
 (either word)
 use
 contract with
 a person
 evidence

 show
 take testimony

 fail
 practicable; workable
 make
 during

Avoid

for the purpose of
 for the reason that
 forthwith
 from and after
 full and complete
 full force and effect
 give consideration to
 give recognition to
 have knowledge of
 have need of
 he or she; his or her; he/she
 hereafter
 hereinafter; hereinbefore;
 hereinabove; above; below;
 following; preceding

 in case
 in cases in which
 in order to
 in the event that
 in sections 1-1-101 to 1-1-
 143, inclusive
 institute
 insure (verb, to make sure)
 is able to
 is applicable
 is authorized to
 is binding upon
 is defined and shall be con-
 strued to mean

Use

for
 because
 immediately
 after
 full
 force; effect
 consider
 recognize
 know
 need
 refer to the subject, "the licen-
 see", "permitholder", etc.
 after [the effective date of this
 act]; after (calendar date)
 (these are objectionable when
 referring to the position of
 a section or other statutory
 provision; if reference is
 necessary, specify the
 chapter, part, section, or
 subsection by number)

 if
 when; whenever; if
 to
 if
 in 1-1-101 through 1-1-143

 begin; start
 ensure
 can
 applies
 may
 binds
 means

Avoid**Use**

is dependent on	depends on
is directed to	shall
is empowered to	may
is hereby authorized and it shall be the person's duty to	shall
is hereby vested with power and authority and it shall be the person's duty in carrying out the provisions of this act to	shall
is required to	shall
is unable to	cannot
it is the person's duty to	shall
it is lawful to	may
law passed	law enacted
legislative assembly	legislature
make application	apply
make payment	pay
make provision for	provide for
matter transmitted through the mail	mail
means and includes	means; includes
member of a partnership	partner
modify	change
monies, moneys	money
necessitate	require
none whatever	none; no
not later than	before
null and void	void
occasion (verb)	cause
of a technical nature	technical
on or after	after
ordered, adjudged, and decreed	ordered
or, in the alternative	or

Avoid**Use**

party	person (unless referring to party to a suit or action)
per annum	a year
per centum	percent
per day	a day
per foot	a foot
period of time	period; time
person of suitable age and discretion	adult (or state age)
prior to	before
prosecute its business	conduct its business
provided (conjunction)	if; but
provided, further; provided, however; provided that	except; but; however (or start a new sentence)
provision of law	law
registered or certified mail	certified mail
render (meaning to give)	give
retain	keep
rules and regulations	rules (or, if federal, regulations)
said	the; that; those
same	it
shall have the power to	may
sole and exclusive	exclusive
speed up	hasten; expedite
subdivision; clause; paragraph	subsection
subsequent to	after
such	(do not use if an article can be used with equal clarity)
terminate	end
the place of abode	residence
to wit	(this is verblage; delete it or use "namely")
under the provisions of	under

Avoid

unless and until
 until such time as
 utilize
 whatsoever
 whensoever
 wheresoever
 whosoever
 whomsoever

Use

unless; until
 until
 use
 whatever
 when; if; whenever
 where
 whoever
 (archaic; improper)

2-21. Citations.

(See also section 3-1(7) and examples.)

(1) Code

The statutes of Montana are cited as the "Montana Code Annotated" or "MCA". The Code is arranged topically by title (see preface to the MCA) and is further subdivided into chapters, parts, and sections. Section 1-2-108, MCA, provides that a statute that refers to another portion of the Code is presumed to refer to the Montana Code Annotated. Therefore, the designation "Montana Code Annotated" or "MCA" is omitted within the Code or within material intended to be codified, but it is generally used in other references. Section 1-2-108, MCA, also provides that a reference to a portion of the Code is presumed to be a reference to that portion as it may be amended. In other words, no reference to year of enactment or amendment is necessary to cite the MCA.

- (a) in bills, " . . . as provided in Title 19, chapter 4, part 2, . . . "
- (b) in resolutions or preambles, " . . . as provided in section 19-4-201, MCA, . . . "

(2) Montana Constitution

The state Constitution is formally cited as "The Constitution of the State of Montana" and more usually cited as "the Montana constitution" in Code or "the Montana Constitution" in other references. The Montana Constitution is arranged topically in articles and sections.

- (a) in the Code, ". . . as provided in Article IX, section 5, of the Montana constitution . . ."
- (b) in resolutions, ". . . as provided in Article IX, section 5, of the Montana Constitution . . ."

(3) Session Laws

Session laws are the compilation of all legislation passed into law by a specific legislative session. Session laws are arranged by legislative session year and are divided into chapters, which are further divided into sections.

- (a) "Chapter 5, Laws of 1991, . . ."
- (b) ". . . section 2, Chapter 5, Laws of 1991, . . ."

(4) Rules

Official rules are occasionally cited in legislation.

- (a) "Rule 4D, Montana Rules of Civil Procedure, . . ."
- (b) "Rule 202(b), Montana Rules of Evidence, . . ."
- (c) "Rule 4.6.607, Administrative Rules of Montana, . . ."
- (d) "Joint Rule 40-110 refers . . ."

(5) Federal Materials

Federal materials are occasionally cited in legislation.

- (a) "18 U.S.C. 922" (no section symbol or word "section")
- (b) "15 U.S.C. (13)(b) and (c)"
- (c) "49 CFR, part 4, 301 and 302, federal class C, . . ."
- (d) "42 CFR, part 441, subpart G, . . ."
- (e) "21 CFR 103.31"
- (f) "section 125 of the Internal Revenue Code . . ."
- (g) "Public Law 100-485"
- (h) "section 2 of Public Law 99-145"

(6) Miscellaneous

- (a) "supreme court Order No. 86-223, dated . . ."
- (b) "Initiative Measure No. 5"

Chapter 3

Form Guide

Capitalization, Punctuation, and Abbreviation

3-1. Capitalization.

Capitalization rules for bill drafting represent an exception to standard usage. In drafting bills, capitalize as little as possible. Capitalization has no legal significance, and the lower case is easier to read and write.

Capitalization is clerically controlled, in accordance with the rules that follow, by the Legislative Council staff when bills are prepared for introduction.

(1) Capitalize the first word in a sentence. The first word in each subsection following a colon must also be capitalized if each item expresses a complete thought and follows a complete introductory sentence.

(2) Capitalize months and days of the week.

(3) Capitalize names of specific publications, such as "1972 *Standard Industrial Classification Manual*" or "*Survey of Current Business*".

(4) Capitalize "Montana" (but not "state") in "state of Montana". Capitalize "County" but not "city" in the name of a county or city, such as "Cascade County", "Cascade and Chouteau Counties", or "city of Butte".

(5) Capitalize names of specific persons or places, such as "Charles Marion Russell" or "Rocky Mountains", and specific regions, such as "Pacific Northwest". Capitalize geographic names, such as Swan River (but not "forest camp") in "Swan River forest

camp". Do not capitalize words that indicate geographic location, such as "northern Montana".

(6) Capitalize names of historic events, such as "World War II", and holidays, such as "Christmas Day" and "Washington's Birthday".

(7) Capitalize references to a statute compilation, such as "MCA". Do not capitalize "the statutes", "the codes", or "the Montana constitution" unless the full and exact title is used (e.g., The Constitution of the State of Montana). Do not capitalize the words "chapter" or "section" when referring to the Code or the Constitution, but capitalize the name of a particular title in the Code, such as "Title 19"; the name of an article in the Constitution, such as "Article V, The Legislature"; and a chapter in the Session Laws, such as "Chapter 5, Laws of 1991". Also, capitalize and spell out Montana Rules of Civil Procedure, Montana Rules of Evidence, and Administrative Rules of Montana.

Citation Examples

1. Code

- (a) ". . . as provided in Title 19, chapter 4, part 2, . . ."
- (b) ". . . as provided in chapter 6, part 1, of this title . . ."
- (c) ". . . as provided in 19-4-201 . . ."
- (d) in resolutions, ". . . as provided in section 19-4-201, MCA, . . ."

2. Constitution

- (a) ". . . as provided in Article IX, section 5, of the Montana constitution . . ."
- (b) in resolutions, ". . . as provided in Article IX, section 5, of the Montana Constitution . . ."

3. Session Laws

- (a) "Chapter 5, Laws of 1991, . . ."
- (b) ". . . section 2, Chapter 5, Laws of 1991, . . ."
- (c) ". . . section 1, Chapter 5, Special Laws of January 1992, . . ."

4. Rules

- (a) "Rule 4D, Montana Rules of Civil Procedure, . . ."
- (b) "Rule 202(b), Montana Rules of Evidence, . . ."
- (c) "Rule 4.6.607, Administrative Rules of Montana, . . ."

(8) Capitalize names of races, citizens, and languages, such as "the tribal councils of the respective Indian tribes", "Spanish", or "French".

(9) Capitalize words pertaining to deity, such as "Almighty God".

(10) Capitalize the name of a particular act, such as "Montana Major Facility Siting Act", and the name of a particular plan, such as "Montana Private Activity Bond Allocation Plan".

(11) Do not capitalize official titles of state, county, or municipal officers, agencies, or institutions, such as "the governor", "the department of highways", "board of county commissioners", or "Montana state university". The same style is used for officers at the federal level, such as "U.S. department of agriculture", "congress", "supreme court", or "the president", and national organizations, such as "American red cross".

(12) Do not capitalize class designations, such as "class one", unless they begin a sentence. However, this rule does not apply to railroad classifications or to hunting or fishing license classifications, i.e., "Class III railroads" or "Class A-1 fishing license".

(13) Do not capitalize "subchapter" or "section" when referring to the Internal Revenue Code, such as "subchapter S.", "Chapter 1", or "section 985, Internal Revenue Code".

Because a resolution is usually a more formal document since the resolution itself is presented or mailed to an agency or party and is not printed in the Code, standard capitalization rules are followed when drafting a resolution. Examples are "State of Montana", "Department of Agriculture", "Department", "Legislative Branch", "Montana University System", and "Legislature".

3-2. Punctuation.

Punctuation generally is not considered part of a statute and therefore is subordinate to the text. But courts do look to punctuation to ascertain meaning if the language is unclear. Therefore, besides striving for clear expression through the proper use of words, the drafter should employ correct punctuation to support the words and avoid ambiguity.

(1) Comma

If a sentence consists of two independent clauses, each with subject and predicate, use a comma before the conjunction.

The commission shall report annually to the governor, and it shall cause the report to be printed for public distribution.

An exception to this rule occurs when a sentence starts with a dependent clause that applies to both independent clauses that follow. No comma separates the independent clauses because it would make the introductory dependent clause seem to apply only to the first independent clause.

If a conference committee fails to reach agreement or if its report is not adopted by both houses, the governor's recommendation is considered not approved and the bill is returned to the governor for further consideration.

Do not use a comma to separate two predicates joined by a coordinating conjunction.

The commission shall report annually to the governor and cause the report to be printed for public distribution.

Set off a parenthetical phrase or clause with two commas.

The report, which must be approved by a majority of the commission members, must be sent to the governor before July 1 of each year.

When "or" introduces a word or a phrase that identifies or explains the preceding word, set off the explanatory expression with commas.

Set off parenthetical, or nonessential, elements with commas.

However, if "or" introduces an alternative thought, the expression is not parenthetical and should not be set off by commas.

The punctuation depends on whether the item is parenthetical or essential.

Words, phrases, or clauses in a series are separated by commas.

The department shall provide the board with reasonably necessary supplies, equipment, and clerical services.

A comma is used before the conjunction connecting the last two members of a series.

. . . wheat, corn, barley, and rye.

When a series is followed by a verb or phrase that is unmis-
takably applicable to the entire series, a comma is incorrect after
the last word of the series.

<i>correct</i>	Wheat, cattle, timber, and coal are some of the state's major exports.
----------------	---------------------------------------------------------------------------

However, if there is ambiguity or danger of connecting only the
last item of the series with what follows, rewrite the sentence to
clarify the meaning.

<i>incorrect</i>	The revenue generated by wheat, cattle, timber, and coal alone will account for the greatest portion of income.
------------------	--------------------------------------------------------------------------------------------------------------------------

<i>correct</i>	The greatest portion of income will be derived from the revenue generated by wheat, cattle, timber, and coal.
----------------	------------------------------------------------------------------------------------------------------------------------

<i>correct</i>	The greatest portion of income will be derived from the revenue generated from the following sources: (1) wheat; (2) cattle; (3) timber; and (4) coal.
----------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Do not set off an essential clause with a comma. An essential
clause is one that is necessary to the meaning of the sentence and
cannot be omitted.

<i>correct</i>	Application must be made by July 1 if a permit is wanted.
----------------	--------------------------------------------------------------

<i>incorrect</i>	Application must be made by July 1, if a permit is wanted.
------------------	---------------------------------------------------------------

<i>correct</i>	An insurer may not disburse \$100 or more unless a signed voucher is received.
----------------	--------------------------------------------------------------------------------------

incorrect

An insurer may not disburse \$100 or more, unless a signed voucher is received.

(2) Semicolon

Use the semicolon between two main clauses not joined by one of the simple coordinating conjunctions (and, but, or, nor).

Letters and other private communications in writing belong to the person to whom they are addressed and delivered; however, they cannot be published against the will of the writer.

Also use the semicolon to separate two or more coordinate elements, one or both of which contain commas, when needed for clarity.

The probation officer in each county shall assist the conciliation court; but the court, with the consent of both parties, may make independent investigations.

The presence of the coordinating conjunction "but" in the second example would permit the use of a comma to separate the two main clauses if there were no commas in the second clause.

Use the semicolon to separate coordinate elements in a series introduced by a colon when those elements are dependent clauses or phrases. (See example under "Colon" below.)

(3) Colon

A colon is used most often in legislative drafting to introduce a series, usually in outline form.

Each policy must contain:

- (1) the names of the parties to the contract;
- (2) the subject of the insurance; and
- (3) the risks insured against.

A colon also may be used to introduce a long quotation.

(4) Parentheses and Brackets

Use commas in preference to parentheses when possible. However, occasionally parentheses will serve to clarify the meaning of a sentence.

Two or more counties may apply for funds for construction (and operation and maintenance when permitted) under (sections 4 and 5).

Do not use brackets as punctuation. Use brackets to enclose internal references, "this act", and effective dates. Also, brackets are used in the Code to denote erroneous material or material needing amendment or replacement.

(5) Quotation Marks

In American usage, printers usually place a period or comma inside closing quotation marks whether it belongs logically to the quoted matter or to the whole sentence or context. In bill drafting, clarity is more important than usual, so a period or a comma should be placed outside quotation marks if it does not belong to the quoted matter. In drafting, always use double quotes.

Do not overuse quotation marks. Generally, in legislative drafting quotation marks are used only to enclose titles or texts of acts or laws referred to or incorporated by reference, to enclose defined words or phrases, or to enclose amended code sections. However, names of acts are not quoted in the title of a bill or resolution.

(4) The state of Montana accepts and assents to the terms and provisions of the act of congress, approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work".

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "GAME" TO INCLUDE THE WOOLLY MAMMOTH."

(7) "Game" means game animals and game birds, the killing of which is restricted by the laws of Montana.

Section 1-1-218, MCA, is amended to read:
"1-1-218. Construction of words giving joint authority. Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the ~~act~~ code giving the authority."

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE MONTANA ADMINISTRATIVE PROCEDURE ACT TO INCLUDE"

3-3. Abbreviation.

Abbreviations are seldom used in legislative writing and should be avoided, except in two instances. "Montana Code Annotated" should be abbreviated to "MCA", and "1 p.m." is preferred to "1:00 o'clock p.m.". Do not add "MCA" to a code section number within the text of a section of the Code. (See section 1-2-108(1), MCA, which provides that it is presumed the section number refers to the Montana Code Annotated.)

Numbers

3-4. General.

Numbers one through nine are spelled out, and numbers 10 and over are written in numerals. (However, note the exceptions in sections 3-5 through 3-16 below.) Numbers at the beginning of a sentence should be spelled out.

five, 22, 1,000, 1 million, 1.5 billion

3-5. Money.

6 mills, 0.5 cent, 1 cent, 1 1/2 cents, 25 cents, \$1,
\$25, \$37.50, \$100, \$2,000, \$25,000, \$1.25 million,
\$1,300,000, \$3 million, \$3.5 million

3-6. Measurements.

2 inches (feet, yards, meters, acres, etc.)
8 feet 2 inches
2 feet x 3 inches
15 x 30 feet (but a "15- by 30-foot room")
5 pounds (bushels, barrels, gallons, etc.)
3 acres (horsepower, etc.)
35 degrees F

3-7. Age.

6 years old
52 years, 10 months, 6 days
a 3-year-old child
65th birthday
"A person who is 18 years of age or older" (not "over 18 years of age").
"A person who is under 6 years of age".
"A person who is 18 years of age or older and under 66 years of age" (not "between the ages of 18 and 65").

3-8. Time.

3 days
1 month
3 fiscal years
noon (not "12 noon")
midnight (not "12 midnight")
9 a.m. (not "9:00 a.m." or "9:00 o'clock a.m.")
1 p.m.
1:30 p.m.

3-9. Percentages.

0.3%
3%, 25%
3/4 of 1%
1/2 of 1% or 0.5% (not "1/2%")
57.5%
2 percentage points

An irregular fraction should not be expressed as a decimal — 1/3 of 1% (not 0.333%) or 8 1/3%.

In a bill title spell out the word "percent" — do not use the symbol.

3-10. Unit Modifiers.

5-day week
10-year sentence (measurements)
1-year term
five-person board (not unit of measurement)
1-, 2-, and 3-year terms (but "term of 5 years")
four-wheel-drive vehicle

3-11. Ordinals.

First through ninth are spelled out; 10th and over are numerals. See also sections 3-13 and 3-14.

first term
35th day
15th birthday

3-12. Fractions.

Fractions standing alone or followed by "of a" or "of an" are spelled out, as "one-half day", "one fifty-sixth", or "three-fourths of an inch". Mixed fractions are written in numerals, such as "2 1/2 times". (This rule holds true even in measurements, but see exception under "Percentages" in section 3-9.)

In a unit modifier, use figures, such as "1/2-inch pipe" or "3/4-ton truck" (in other words, no double hyphen).

3-13. Numbers in Series.

Figures are used in a group of two or more numbers when any one is 10 or greater: "The farm has 3 cows and 12 sheep."

3-14. Classes, Grades, Etc.

property tax classification — class one, class twelve

milk control — class III
mustard seed — class 2, No. 3
oranges — United States No. 2 grade
handicapped levels — Level I—a pupil
compensation plan No. 2
school grades are expressed: "1st grade", "2nd grade",
"12th grade"
hunting and trapping licenses — Class A-6, Class C-2
fishing license — Class A, Class B-4
railroads — Class III

3-15. Dates.

Dates should be expressed as follows:

December 31 (not "December 31st" or "31st day of
December")
July 12 (not "July 12th")
December 31, 1992, (with comma following year in a
complete date, unless at end of sentence)
December 1992
October, November, and December 1992
1993-94

A period of time is often expressed as follows:

"For the period beginning July 1, 1991, and ending June
30, 1994, . . ."
"For the fiscal year beginning July 1, 1993, and ending
June 30, 1994, . . ."
"For the biennium beginning July 1, 1993, and ending
June 30, 1995, . . ."
"For fiscal years 1994 and 1995, . . ."

An effective date of July 1 should be expressed as follows: "after
June 30, 1993" or "effective July 1, 1993". ("From July 1, 1993",
"after July 1", or "between July 1 and" might be construed to mean
a beginning date of July 2 and should be avoided.)

It is better to refer to a day rather than to the time an event will
occur, such as "90 days after the day on which judgment is
entered", not "90 days after the time . . .". Usually a period is
measured in whole days, not the time of day.

3-16. Bill Titles and Catchlines.

In bill titles, follow the above rules. In catchlines, do **not** use
figures; spell out numbers unless it is a date or a very large
number. Words look better than numbers in boldface.

Chapter 4

The Bill and Its Parts

4-1. Introduction.

A bill is a proposed law as introduced in the Legislature. The bill does not become a law (an "act", "statute") until passed by the Legislature and signed by the Governor or passed over the Governor's veto. If the Governor does not sign or veto a bill within 5 days after receiving it if the Legislature is in session or within 25 days if the Legislature is adjourned, it becomes a law without signature.

A bill that has become a law is delivered to the Secretary of State who assigns a chapter number to it in the order the bill is received by that office. All laws that pass in any one legislative session are first published in the order of passage in a publication entitled *Laws of Montana (Year)*. This publication is referred to as the Session Laws. All permanent new provisions are assigned code section numbers by the Code Commissioner staff and are incorporated into the Montana Code Annotated.

The proper form and arrangement of a bill have been defined primarily by custom. The Montana Constitution speaks of bill titles in Article V, section 11; section 5-4-101, MCA, prescribes the form of the enacting clause. None of the other bill parts are mandated by law or rule. However, the following form is now used by the Legislative Council. By legislative rule all bills, before they are introduced, must comply with the format, style, and legal form prescribed by the Council. Bills not prepared by the Legislative Council staff must be reviewed by that staff and entered on the automated bill drafting system before introduction; this system and procedure are further explained in Chapter 10.

4-2. Bill Arrangement.

(* - a mandatory part of a bill)

1. Bill Identification*

- (a) Legislative Council number
- (b) designation and number
- (c) sponsor line
- (d) "By Request . . ." line
- 2. Title*
- 3. Preamble
- 4. Statement of Intent
- 5. Enacting Clause*
- 6. Body*

Codified

- (a) short title
- (b) purpose section
- (c) definitions
- (d) basic provisions
- (e) penalty

Noncodified

- (f) repealer
- (g) codification instruction
- (h) coordination instruction
- (i) saving clause
- (j) severability clause or nonseverability clause
- (k) applicability
- (l) effective date

Explanation of Bill Parts

(See Appendix P for form.)

4-3. Bill Identification.

(1) Legislative Council Number

The number appearing at the top right-hand corner of a bill, such as "LC 0001/01", is the number assigned by the Council staff as the bill request is received. The LC number is used to identify the bill during the drafting process prior to the time of introduction and assignment of a bill number.

(2) Designation and Number

The blank preceding the words "BILL NO." is used to identify the bill as a House or Senate bill, and the blank following is used to number the bill. The blanks are filled in manually by the Chief Clerk of the House or Secretary of the Senate at the time of introduction.

(3) Sponsor Line

The second line of a bill is used to identify the sponsor. The sponsor signs the bill prior to introduction. If there is more than

one sponsor, the chief sponsor signs first. Bills may be sponsored jointly by a Senate and a House member. Both of these members are considered a "chief sponsor" for the jointly sponsored bill. If the bill is introduced in the Senate, it becomes a Senate bill and the Senate chief sponsor signs first. This procedure is reversed if the bill is introduced in the House.

(4) By Request Line

Joint Rule 40-40 provides that if a bill is proposed by a legislative committee or is introduced by request of a state agency, that fact must be indicated by inserting "By Request of the _____" following the names of the sponsors.

LC 0001/01

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF _____

Since adoption of the seven-bill limit (also in Joint Rule 40-40), it is particularly important that a state agency drafter include this line when the bill draft is submitted to the Legislative Council for review because if the bill is by request of a state agency, it does not apply against the legislator/requestor's seven-bill limit.

4-4. Title.

(1) General

The title identifies the bill to the legislators and the public and must clearly summarize the contents of the bill. The drafter should be familiar with the substantial body of case law that has developed over defects in titles.

Article V, section 11(3), of the Montana Constitution provides:

Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

The main purpose of the constitutional provision is to ensure that the title of a bill gives reasonable notice of the content to legislators and the public. It also prevents multisubject legislation from being passed by the combined votes of the advocates of

separate measures when no single measure could be passed on its own merits. The Montana Supreme Court has interpreted this provision to require a clause in the title to reflect an issue that would be considered important by legislators voting on the bill. *White v. St.*, 233 M 81, 759 P2d 971, 45 St. Rep. 1310.

Title challenges under this section of the Constitution may be brought on the grounds that either the title indicates that the bill contains more than one subject or the title does not clearly express the subject of the bill, or both.

The Montana Supreme Court has considered the question of sufficiency of title numerous times. In order to more fully comprehend title drafting problems, the drafter should read the cases cited in this section or at least review the case notes and Attorney General's opinions contained in the MCA Annotations to Article V, section 11, of the Montana Constitution. Under the 1972 Constitution, if a law is challenged as having a defective title, the action must be brought within 2 years after the effective date of the law.

(2) Exceptions to Sufficiency of Title Provision

As stated in Article V, section 11(3), of the Montana Constitution, general appropriation bills and bills for the codification and general revision of the laws are exempt from the unity of subject and clear expression of subject rules.

(3) General Appropriation Bills

In order to fall within the exception, an appropriation bill must be a general appropriation bill; that is, it may embrace nothing but appropriations for "the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools". (See Article V, section 11(4), of the Montana Constitution.) Further, an incidental provision in an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Supreme Court has held that provisions relating to the expenditure of the money appropriated or its accounting may be included in an appropriation bill without being mentioned in the title (*St. v. Ford*, 115 M 165, 171). However, in *Helena v. Ombolt*, 155 M 212, the Supreme Court said, "... appropriation bills should not be held to amend substantive statutes by implication. . . . Such tactics are recognized as exceedingly bad legislative practice." (The appropriation bill in question contained a section that was irreconcilable with an existing statute, and the lower court had held that the appropriation measure, being a later bill, impliedly repealed the earlier statute.) The Attorney General relied on *Helena v. Ombolt* in finding that a provision in the 1981 general appropriation act should not be given effect because it was in conflict with a permanent substantive statute. Therefore,

provisions other than actual appropriations should be included in a general appropriation bill only if germane to expenditure or accounting and consistent with permanent substantive law.

(4) General Revision

In *St. v. District Court*, 49 M 146, 150, the Supreme Court said that a bill whose plain purpose was to revise the laws on a particular subject, as well as an omnibus revision bill covering many subjects, is within the revision exception.

In the past, the Supreme Court has found that certain bills come within the general revision exception although the titles do not specifically designate the bills as such. To date, the Supreme Court has always found a bill within the exception when the title indicated that the bill was a general revision.

If a bill is intended to be a general revision, the title should so state.

"AN ACT GENERALLY REVISING THE LAWS RELATING TO
PUBLIC SCHOOLS; AMENDING"

(5) Including List of Amended or Repealed Sections in Title

There is diversity of opinion as to whether reference by number only to a code section to be amended or repealed is sufficient in a title. However, all authorities agree that the title is sufficient if the number of the section to be amended or repealed and an indication of the subject matter of the amendment or repeal are included in the title. "Reference in the title of the amendatory Act to the subject matter of the section to be amended need not be so comprehensive as to constitute a complete index to or abstract of the section. 'All that is required in such case is a reasonable degree of certainty as to the statute to be amended.'" (See *St. v. Duncan*, 74 M 428, 437.)

Therefore, the title of a bill should both indicate the general purpose of the amendment and list the code sections amended or repealed.

"AN ACT AMENDING THE LAWS RELATING TO SALE OF
LANDS FOR TAXES BY COUNTY TREASURERS; AMENDING
SECTIONS 8-1-101 AND 8-1-102, MCA; AND REPEALING
SECTIONS 8-1-109 AND 8-1-110, MCA."

If a bill repeals a section, the title should indicate the subject matter and list the section number.

"AN ACT REPEALING SECTION 1-1-202, MCA, WHICH
DEFINES REGISTERED MAIL."

(6) Appropriation in Title

In *Hill v. Rae*, 52 M 378, the Supreme Court held that when an appropriation is incidental to the larger single subject of legislation, it need not be made by separate bill. In order to facilitate legislative handling of appropriations, it is necessary to mention the appropriation in the title. If a bill is a statutory appropriation (section 17-7-502, MCA), that fact must also be included in the title.

(7) Including Effective Dates in Title

It is good drafting practice to include effective dates, other than October 1, in the title, such as:

PROVIDING AN EFFECTIVE DATE

or

PROVIDING AN IMMEDIATE EFFECTIVE DATE

or

PROVIDING A DELAYED EFFECTIVE DATE

If a specific effective date is not provided, an appropriation statute becomes effective on July 1 following passage and approval. All other statutes take effect on October 1.

(8) Short Bill Title

Various tools for tracking bills during the legislative session are prepared by the Legislative Council, House, and Senate staffs. The most significant of these tools is the on-line Bill Status System, which has the capability to display cumulative actions taken on a specific bill. The format for the cumulative bill status display requires use of a shortened title of 76 characters (letters, hyphens, and spaces between words) or less. Each bill drafter should write a short bill title, using the form at Appendix Q, and attach it to the draft submitted to the Legislative Council. The short bill title may include abbreviations. The drafter may omit sections repealed and amended and the formal introduction ("A BILL FOR AN ACT ENTITLED: "AN ACT . . .").

4-5. Preamble.

The preamble, which is optional, follows the title and precedes the enacting clause. Because of its placement, it does not become a part of the law. It is a preliminary statement of the reasons for the enactment of the law and begins with the word "WHEREAS".

WHEREAS, the Montana Constitution requires that all executive and administrative offices and instrumentalities of the Executive Branch of state government be allocated by law among not more than 20 departments

(See discussion of purpose sections below.)

4-6. Statement of Intent.

Joint Rule 70-30 provides that if a statement of intent is included, it "must be included as a part of the bill between the title and the enacting clause under the heading "Statement of Intent"". (See section 6-3 for discussion of statements of intent.)

4-7. Enacting Clause.

The enacting clause, which is prescribed by law, separates the identification portion of the bill from the body of the bill.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4-8. Short Title.

A short title is not suitable for all enactments; however, if an act creates new law in a definable area, a short title enables quick future identification. When used, the short title appears as section 1 of the bill.

NEW SECTION. **Section 1.** Short title. (This act) may be cited as the "Reclamation and Development Grants Program Act".

4-9. Purpose Section.

Courts have relied on purpose sections to construe unclear and ambiguous language. Of course, clear and unambiguous language is always preferred to reliance on a purpose section. A well-drafted act should not require an extraneous statement to recite reasons for its enactment or what it seeks to accomplish. However, occasionally it is necessary to express the reason prompting enactment or the policy or purpose of an act. A good example is when the statute imposes a burden on a particular class of persons, thus requiring at least a rational basis for treating them differently from other persons. In *Oberg v. City of Billings*, 207 M 277, 674 P2d 494, 40 St. Rep. 2034 (1983), the Montana Supreme Court stated that "While the courts are seldom concerned with the wisdom of legislation, the purpose of the legislation is of vital concern where the constitutionality of a statute is challenged as a denial of equal

protection." If the reason, policy, or purpose must be stated, first consider the preamble, which is not codified. (Preambles are set out in Annotation compiler's comments to appropriate Code sections, parts, or chapters.) If a purpose section is preferred to a preamble, it becomes a part of the law. The purpose should be stated concisely at the beginning of the bill following the enacting clause (or short title, if there is one). If a purpose section is necessary, it should be carefully and thoughtfully drafted. (See also the discussion of statements of intent in Chapter 6.)

4-10. Definitions.

(1) To avoid repetition and to assure clarity, a well-drafted bill often contains a definition section that precedes the basic provisions of the bill. A definition section is of definite advantage to:

(a) define a general term in order to avoid its frequent repetition, such as "'Employee deductions" means all authorized deductions made from the salary and wages of an officer or employee of a state agency.";

(b) avoid repeating the full title of an officer or of an agency, such as "'Board" means the board of natural resources and conservation.";

(c) give an exact meaning to a word that has several dictionary meanings;

(d) define a technical word that has no popular meaning in commonly understood language; and

(e) limit the meaning of a term that, if not defined, would have a broader meaning than intended.

(2) (a) Do not define a word if it is used in the sense of its ordinary dictionary meaning.

(b) Certain words are defined in Title 1, chapter 1, MCA. If a word is used in the same sense as it is defined in that chapter, it is unnecessary to define it again in a bill. There are also definition sections that apply to entire titles, such as section 45-2-101, MCA (Criminal Code), or to several chapters, such as section 72-1-103, MCA (Probate Code).

(3) The drafter should adhere scrupulously to normal usage of a term. If it is necessary to use a fiction, it should be so labeled.

Do not say: The word "automobile" includes trucks, power boats, and airplanes.

Say: In this chapter, trucks, power boats, and airplanes are treated as if they were automobiles.

(4) Whenever possible, definitions should be arranged alphabetically.

(5) Do not include substantive provisions in definition sections.

(6) After a word is defined, use the defined word, not the definition or a synonym.

(7) If there are definitions already in the Code that you want to apply to your bill, draft a provision so stating (e.g., "seriously mentally ill, as defined in 53-21-102". Don't refer to the subsection in which the definition is contained, such as "53-21-102(15)", because definition sections are almost always in alphabetical order and subsections are often renumbered). If appropriate, draft a codification instruction incorporating the new act into the chapter or part of the Code where the definitions are contained. Do not repeat the definitions. (See discussion in section 4-19.)

(8) Do not define a word that is never used in the bill!

NEW SECTION. **Section 3.** Definitions. As used in (sections 1 through 12), the following definitions apply:

(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(2) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(3) "Person" means an individual, association, partnership, corporation, estate, or any other entity.

4-11. Basic Provisions.

A bill that only amends or repeals existing laws may not present any organizational problem; sections of the Montana Code Annotated usually are amended in numerical order. However, an act that creates a new body of law must be thoughtfully organized. From the standpoint of organization, bills containing all new material are of three types. Those bills may contain:

(1) one main provision supported by subordinate provisions;

(2) several related main provisions, some of which have subordinate provisions; or

(3) a series of related and equal provisions all dealing with one subject.

(1) One Main Provision

Most new legislation is concerned with just one main idea and falls within the first type. Generally, the substantive provisions of an act (Section 4 in the example below) will be followed by the authority that is to administer it and then by the means to make it effective (Sections 5 and 6 in the example below).

NEW SECTION. **Section 4.** Registration of tramways required. A passenger tramway may not be operated in this state unless it is registered with the board

NEW SECTION. **Section 5.** Powers and duties of the board. The board shall:

- (1) adopt rules to implement the provisions of (sections 1 through 12);
- (2) hold hearings relating to the granting, suspension, or revocation of the registration; and
- (3) grant registration and issue registration certificates to applicants who have complied with (sections 1 through 12) and rules adopted under (sections 1 through 12).

NEW SECTION. **Section 6.** Remedies to enforce compliance. If an operator fails to comply with an order or rule of the board, the board may:

- (1) suspend or revoke the registration of the tramway . . . ;
- (2) bring injunctive proceedings

Do not include unnecessary procedural provisions that are already contained in the Montana Administrative Procedure Act or court rules.

(2) Several Related Main Provisions

Each main provision with its related subordinate divisions should be separate from the other main provisions and drafted in detail as if it constituted the entire bill.

(3) Series of Related and Equal Provisions

Bills containing equal provisions relating to a common subject are arranged in a logical order.

4-12. New Material — Catchlines.

Provisions used to create new law in an area not covered by present statutes are referred to as "new material". The basic provisions of a new law should be divided into sections, each of which contains one idea or thought.

Each section must begin with a caption or "catchline". With the exception of the Uniform Commercial Code, catchlines are not part of the law. (See sections 1-11-103 and 30-1-109, MCA.) In the past, catchlines usually were added by the codifier, but the present rule is to add a catchline during the drafting process for convenience and readability. (Should a bill be enacted without catchlines, the Code Commissioner staff will add the catchlines when the new sections are codified.) The catchline should be as brief as possible and clearly show what the section topic is. If the drafter feels that the catchline must be quite long to cover the meaning of the section, the section itself is probably too broad. If more than one thought is set forth in a catchline, each thought is separated by a dash. The catchline should not be a complete sentence.

In new material, internal references to other sections of the bill that are new sections should be bracketed. The Code Commissioner staff will insert the proper code section number before the Code is printed. (See section 4-19 for a discussion of how the placement of new material in the Code is determined.)

NEW SECTION. **Section 4.** Department head — appointment — powers and duties. (1) The governor shall appoint each department head.

(2) Each department head shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department in accordance with 86-1-101, 86-1-102, and (section 20).

In submitting new material to the Legislative Council, the draft should be double-spaced and written on only one side of a page.

4-13. Amendatory Material.

Sections of a bill amending present law usually are arranged in numerical order by code section number. There must be a separate bill section for each code section amended. The brief, simple amending clause should be used. ("Section ____ , MCA, is amended to read:") The Joint Rules provide: "In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined." (See Joint Rule 10-130.) This means that new material added to an existing code section is underlined; new

material that will become an entirely new code section is not underlined and is designated "NEW SECTION".

Section 5. Section 2-17-301, MCA, is amended to read:

"2-17-301. Supervision of mailing facilities. The controller department shall maintain and supervise any central mailing facilities."

The Joint Rules also provide: "A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length." (See Joint Rule 40-80.) The question of whether a subsection may be amended without setting out the entire parent section at length has never been adjudicated in Montana. (Ease of amendment is just one more reason for dividing new law into short, concise sections.) The computerized updating of the statute data base requires that an entire section be amended, not just a subsection. As noted earlier, all bills not prepared by the Legislative Council staff must be reviewed by the Council staff and entered on the automated bill drafting system before introduction. The Council staff prefers that all bills submitted for review that amend existing MCA sections present those amendments in cut-and-paste form or be downloaded from a data base supplied by the Legislative Council; this saves both Council staff and outside clerical staff time and, because of the Council's computerized code data base, is less prone to error than retyping.

If it is necessary to amend Session Law, the drafter must refer to the session law chapter number. (See Appendix E for example of bill amending Session Law.)

The Secretary of State assigns chapter numbers to the laws after they are signed by the Governor. (See section 5-11-204, MCA.)

4-14. Designating New Sections.

Any section that does not amend Code, Session Law, or Administrative Rules of Montana must be designated "NEW SECTION". This designation includes nonamendatory sections, such as repealers and effective dates, and sections in bills containing all new material.

4-15. Short Form Amendments.

To effect a single name change and transfer of functions from one agency to another involving numerous code sections, the short form amendment may be used to save considerable time and expense. After finding all code sections where the name change is necessary, the following form may be used:

NEW SECTION. Section 1. Functions transferred — name change. (1) The functions of the department of agriculture contained in Title 80, chapter 20, 80-31-102, 80-31-110, and 80-32-121 through 80-32-127 (list all code sections, parts, and chapters) that relate to the alphabetizing of animal brands are transferred to the department of livestock.

(2) In the provisions of the Montana Code Annotated listed in subsection (1), the term "department of agriculture" or "department", meaning the department of agriculture, is changed to "department of livestock" or "department", meaning the department of livestock.

4-16. Outline Form.

There is no rule fixing the length of a section. Generally, a section should include only a single idea. The shorter the section, the more quickly it may be understood and the easier it is to amend if amendment is needed. If the drafter finds it difficult to phrase a brief catchline for the section, it is likely that there are too many ideas in the section. Each paragraph in a bill should be given a section or subsection designation. Outline order for subsections is as follows:

- (1) If (1) is used, there must be a (2).
- (2)
- (3)
- (a) If (a) is used, there must be a (b).
- (b)
- (c)
- (i) If (i) is used, there must be a (ii).
- (ii)
- (iii)
- (A) If (A) is used, there must be a (B).
- (B)
- (C)
- (4)

Only the second-to-last item of a series should have an "and" or an "or" (e.g., (a), (b), or (c)).

Sections or subsections are indented except when the (1) follows the catchline. If there is a phrase or sentence following the catchline that ends with a colon and is followed by a (1), that (1) is indented.

22-1-101. Duties of board. (1) The board shall adopt rules relating to public safety

(2) The board shall hold hearings

22-1-101. Duties of board. The board, under the provisions of 15-2-102, shall:

- (1) adopt rules relating to public safety;
- (2) hold hearings; and
- (3) arrange all meetings.

When a complete sentence follows a dependent clause within a subsection, the dependent clause and the sentence end with periods.

The board shall:

- (1) adopt rules relating to public safety;
- (2) hold hearings. The hearings may not be longer than 1 hour in duration.
- (3) arrange all meetings.

If material preceding a colon is a complete thought and each of a numbered (and indented) series can stand alone, the first letter is capitalized and the sentence ends with a period. Otherwise, the first letter is in lowercase and the sentence ends with a semicolon; if some but not all of the first letters must be capitalized (for instance, "Montana"), try to rearrange those phrases so that they begin with a lowercase word.

4-1-101. Definitions. As used in this part, the following definitions apply:

- (1) "Bonds" includes all instruments representing indebtedness, the borrowing of money, or a charge on specific revenue.
- (2) "Public body" means any political or governmental subdivision of the state.

4-1-101. Budget amendment. An approved budget amendment is an approval by the budget director of a request submitted through the budget division to:

- (1) obtain financing;
- (2) transfer excess funds; or
- (3) increase the appropriation.

If possible, include all identical language in the section in the lead-in phrase before the colon. Do not repeat it in each subsection.

Avoid repetitious language, as in (1)(a) through (1)(c) and (2)(a) and (2)(b):

17-7-201. Building and construction defined. In this part, the following definitions apply:

- (1) "Building" includes a:
 - (a) building, facility, or structure constructed or purchased wholly or in part with state money;

(b) building, facility, or structure at a state institution; or

(c) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district; or

(b) building, facility, or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

Preferred:

17-7-201. Building and construction defined. In this part, the following definitions apply:

(1) (a) "Building" includes a building, facility, or structure:

(i) constructed or purchased wholly or in part with state money;

(ii) at a state institution; or

(iii) owned or to be owned by a state agency, including the department of transportation.

(b) Building does not include a building, facility, or structure:

(i) owned or to be owned by a county, city, town, school district, or special improvement district; or

(ii) used as a component part of a highway or water conservation project.

(2) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

Be extremely careful when inserting subsections. Often a meaning can be altered substantially if subsection numbers are carelessly inserted. See the following example. The mathematical computation is entirely different in the two versions.

Wrong:

The holder may charge an amount equal to the difference between:

- (1) the refund required under 31-1-242; and
- (2) the refund required for payment in full as of 1 month prior to the due date times the number of months in which no payment was made.

Right:

The holder may charge an amount determined as follows:

- (1) Calculate the difference between:
 - (a) the refund required under 31-1-242; and
 - (b) the refund required for payment in full as of 1 month prior to the due date.
- (2) Multiply the difference by the number of months in which no payment was made.

4-17. Penalty.

If a violation of an act is to result in a penalty, a separate section is devoted to setting forth the penalty. The wording of this section is patterned after that used in the Montana Criminal Code of 1973.

NEW SECTION. **Section 8.** Penalty. A person convicted of violating 1-1-101 shall be fined not more than \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

The traditional language in the above example provides an exception to the "shall/must" rule stated in section 2-5.

4-18. Repealer.

It may be necessary to repeal one or more statutes that conflict with a new act. Each statute to be repealed must be identified. If three or more consecutive code sections are to be repealed, the drafter should use the word "through" to indicate the series. However, do not include reserved sections. If an entire chapter or part is to be repealed, it is still best to use the "through" form because to say "chapter 7 is repealed" implies that no future law may be codified in chapter 7.

A statement that "all acts or parts of acts in conflict herewith are repealed" is improper and ineffective.

Whenever a bill repealing a section is drafted, the same bill must amend any other section in the Code containing a reference to the section being repealed. The Legislative Council has a complete listing of all internal references. (See section 1-7.)

NEW SECTION. **Section 9.** Repealer. Sections 1-1-101 through 1-1-106 and 3-4-102, MCA, are repealed.

4-19. Code Placement & Applicability — Codification Instruction.

(1) Placement

The drafter is cautioned not to assign code section numbers to new material or to renumber existing code sections because of the possibility of the same number being assigned to more than one section and because logical placement cannot be determined until all the legislation passed during a session is studied as a whole. However, the drafter may propose placement of the law and express this intent by attaching a "Suggested Assignment of Statute Numbers" form to the bill draft. (See Appendix R.)

It may be necessary to express this intent in the bill itself in a section giving instructions to the Code Commissioner to codify the section in a given chapter or part. (See discussion and example below.)

(2) Applicability

Often it is not enough merely to suggest where a section should be codified. In many instances, it is vital that the drafter express the intent to apply present law to the new law.

For example, let us assume the drafter is drafting a bill that relates to a chapter of the Code that is arranged as follows:

CHAPTER 1 RINKY DINK AGENCY Part 1 — General Provisions

- 1-1-101. Definitions.
- 1-1-102. Rulemaking authorized.
- 1-1-103. Injunction authorized.
- 1-1-104. Penalties.

Part 2 — Certificates and Permits

- 1-1-201. Certificate or permit required.

- 1-1-202. Application.
- 1-1-203 through 1-1-206 reserved.
- 1-1-207. Hearings.
- 1-1-208. Appeals.

The drafter's bill is concerned with findings necessary for issuance of a certificate. After studying chapter 1 carefully, the drafter determines that the one-section bill should be codified as 1-1-203. However, in order to so codify the section, the Code Commissioner may be forced to make additional changes in several sections unless the bill itself shows an intent to incorporate the new law into the present law.

For instance, if in our hypothetical chapter, 1-1-101 (Definitions) or 1-1-104 (Penalties) contains language such as "as used in this chapter, the following definitions apply" or "Violation of this chapter is a misdemeanor", it could be an error to insert new law into the chapter without excepting it from the definition and penalty sections. Therefore, the Code Commissioner would be required to add excepting language. Mere placement would appear to apply the definitions and penalty to the new section when the Legislature had not expressed an intent that they apply.

If the intent is to have the definitions and penalty apply, the drafter must insert a section in the bill to indicate this intent. (See example below.)

(3) Codification Instruction

Present law may by reference be incorporated into a bill by use of a codification instruction. To avoid repeating definitions, rulemaking authority, penalties, and other substantive law, etc., and to ensure that an established body of law with its previously construed terms will apply to new law, a codification instruction is essential. Whenever a bill contains new sections, either a codification instruction should be included in the draft or a "Suggested Assignment of Statute Numbers" form should be attached, whichever is appropriate.

NEW SECTION. Section 13. Codification instruction. (Sections 1 through 5) are intended to be codified as an integral part of Title 2, chapter 6, part 7, and the provisions of Title 2, chapter 6, part 7, apply to (sections 1 through 5).

A codification instruction may also be used to effect renumbering and reintegrating of code sections into a different chapter or part of the Code.

NEW SECTION. **Section 13.** Codification instruction. Sections 20-25-901 through 20-25-903 are intended to be renumbered and codified as an integral part of Title 19, chapter 4.

4-20. Coordination Instruction.

Frequently, the Legislature considers two bills that conflict with each other. To determine whether there is an introduced bill that conflicts with a current drafting project, a bill drafter may consult the status report on code sections affected. The Legislative Council also makes available a sections amended list, arranged numerically according to MCA number, of all MCA sections proposed for amendment and the bills amending them. The Code Commissioner staff typically prepares about 300 composite sections for each edition of the MCA. Multiple amendments to the same section do not usually represent a conflict; however, most conflicts that do occur arise from such multiple amendments. Assuming other means are not available to resolve such conflicts (e.g., negotiation between the requestor and the sponsor of the other bill), a coordination instruction may be necessary. A typical coordination instruction will void the conflicting provision in the draft bill if the other bill is passed and approved with the troublesome provision intact.

NEW SECTION. **Section 14.** Coordination instruction. If ____ Bill No. ____ (LC 200) is passed and approved and if it includes a section that amends 1-1-101, then (section 1 of this act), amending 1-1-101, is void.

4-21. Saving Clause.

Because normally it is presumed that changes in the law are in full force from the effective date, new laws often could disrupt transactions already in progress. The saving clause preserves rights and duties that already have matured or proceedings already begun.

NEW SECTION. **Section 15.** Saving clause. (This act) does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before (the effective date of this act).

If a criminal statute is repealed, unless the act itself contains language to the contrary, section 1-2-205, MCA, applies. It provides that the repeal of a law creating a crime does not bar prosecution for or punishment of an act already committed in violation of that law.

Another method of preserving rights and duties that have matured is to choose a date upon which the persons coming within the act must comply with its operative provision.

NEW SECTION. **Section 15.** Act operative on January 1, 1992. A certificate is not required under (section 10) for any facility under construction or in operation on or before December 31, 1991.

4-22. Severability Clause.

If a statute is found to be unconstitutional or invalid in part, the court must decide if the invalid portion is severable from the valid portion and looks to legislative intent. The Montana Supreme Court has held that inclusion of a severability clause in a bill creates a presumption that the valid portions of a bill would have been enacted without the invalid portions (*Bacus v. Lake County*, 138 M 69, 354 P2d 1056, 1083) and thus only the invalid portions are voidable. (See, however, *White v. St.*, 233 M 81, 759 P2d 971, 45 St. Rep. 1310.) As a rule, severability clauses are not codified but are noted in the Annotations.

NEW SECTION. **Section 16.** Severability. If a part of (this act) is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of (this act) is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

4-23. Nonseverability Clause.

In the rare instance that the sponsor intends that the entire act should fall if one of the provisions is declared unconstitutional, a nonseverability clause may be added.

NEW SECTION. **Section 16.** Nonseverability. It is the intent of the legislature that each part of (this act) is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

4-24. Extraordinary Vote Clause.

Certain types of bills require extraordinary votes for approval. (See section 5-7.)

NEW SECTION. **Section 17.** Two-thirds vote required. Because (section 2) limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

4-25. Applicability Date.

Do not confuse applicability date with effective date. A bill may become effective on passage and approval or on October 1 but apply retroactively or prospectively. To apply retroactively, a law must expressly so state (section 1-2-109, MCA).

NEW SECTION. **Section 18.** Retroactive applicability. (Sections 1 through 5 and 7 through 9) apply retroactively, within the meaning of 1-2-109, to all occurrences after December 1, 1992.

or

NEW SECTION. **Section 18.** Applicability. (This act) applies to tax years beginning after December 31, 1993.

4-26. Effective Date.

Section 1-2-201(1), MCA, provides: "(a) Except as provided in subsection (1)(b) or (1)(c), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein.

(b) Every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed therein.

(c) Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein."

Passage and approval means the time that a measure is either signed by the Governor or that it becomes law automatically if not signed within the prescribed time. An effective date should not be included in a bill unless the sponsor wants to delay the effective date, there is an emergency requiring an early effective date, the bill has fiscal impact necessitating a July 1 effective date (see Bills With Fiscal Impact, section 6-1), or the bill grants rulemaking authority that must be exercised prior to October 1 (see Bills Granting Rulemaking Authority, section 6-2). An effective date before October 1 may deprive the general public of sufficient notice and deprive administrators of the act of sufficient time to prepare procedures for the new act. (See also section 13-27-105, MCA, for effective date of an initiative or referendum.)

NEW SECTION. **Section 19.** Effective date. (This act) is effective December 1, 1993. (*delayed*)

or

NEW SECTION. **Section 19.** Effective date. (This act) is effective on passage and approval. (*immediate*)

or

NEW SECTION. **Section 19.** Effective date. (This act) is effective July 1, 1993. (*early*)

Occasionally, it is desirable to make only a portion of the act effective before October 1. In such a case, it is essential to make sure that the effective date section is itself made effective on the earlier date. An effective date section that doesn't itself become effective until October 1 cannot operate until October 1 and therefore cannot make other provisions of the act effective before October 1.

*Wrong/
Inoperative*

NEW SECTION. **Section 19.**
Effective date. (Sections 3, 5, and 7)
are effective on passage and
approval.

*Right/
Operative*

NEW SECTION. **Section 19.**
Effective date. (Sections 3, 5, 7, and
this section) are effective on passage
and approval.

Special Types of Bills

5-1. Validating Bills.

A validating bill is used to cure any irregularities in actions, proceedings, or transactions carried out under authority of existing law. A bond validating act is passed each session by the Montana Legislature. This type of bill may be used to validate other types of actions (such as approval of plats, distribution of revenues according to a prior census, petitions for creation of districts, etc.) as long as it does not impair the obligation of contracts or disturb a vested right.

In the past, bond validating acts have broken all rules concerning style and language in legislative drafting. It is not necessary to continue to use archaic, flowery language. (See Appendix G for a sample validating act.)

5-2. Interstate Compacts.

An interstate compact is a contract among several states that is enacted into law in each contracting state. A compact must be enacted in substantially the same form in each party state. For example, the drafter may inspect the several interstate compacts adopted by Montana, such as the Driver License Compact (section 61-5-401, MCA), Interstate Compact on Juveniles (section 41-6-101, MCA), Interstate Library Compact (section 22-1-601, MCA), and Interstate Compact on Mental Health (section 53-22-101, MCA).

5-3. Uniform or Model Acts.

(1) Uniform acts are prepared by the National Conference of Commissioners on Uniform State Laws and generally are intended to be followed exactly in substance. The purpose of a uniform act is to cover an area of law by a method that will avoid conflicts among the laws of different states. An example is the Revised Uniform Reciprocal Enforcement of Support Act (1968), Title 40, chapter 5, part 1, MCA.

(2) Model or "suggested" acts are prepared by the drafting committee of the Council of State Governments and by other persons and organizations and are intended as guides for legislation in which uniformity is not necessary. A model act is essentially a suggested method for handling a given area of law by providing guidelines within which a state may substitute sections to accommodate local peculiarities. An example is the Montana Business Corporation Act, Title 35, chapter 1, MCA. Copies of the publication *Suggested State Legislation* by the Council of State Governments are available in the Legislative Council library.

5-4. Appropriation Bills.

Article V, section 11(4), of the Montana Constitution requires every appropriation other than general appropriations for the operation of government to be "made by separate bill, containing but one subject". (See also discussion of general appropriation bills in section 4-4(3).) The large general appropriation bills covering the usual expenses of state government are prepared in accordance with a predetermined format. (See Appendix F for sample format.)

NEW SECTION. Section 1. Appropriation. The following money is appropriated from the general fund to the board of bill drafting to fund publication of the Bill Drafting Manual:

Fiscal year 1994	\$65,720
Fiscal year 1995	9,280

NEW SECTION. Section 1. Appropriation. The following money is appropriated from the account established by 69-1-223 to the office of the consumer counsel:

Fiscal year 1994	\$200,000
Fiscal year 1995	300,000

The Montana Supreme Court has held that an appropriation may be part of a nonappropriation bill without violating the unity of subject rule if the appropriation is incidental to the single subject of the bill (*Hill v. Rae*, 52 M 378, and *St. v. St. Bd. of Educ.*, 97 M 132). For example, if a bill creates a governmental agency or program, a section of the bill appropriating money to fund the program would be proper. However, the most recent (and probably the safest) practice has been to create the new entity and provide

for necessary administrative procedures, etc., in one bill and appropriate the necessary money therefor in a separate bill.

Bills statutorily appropriating money by permanent law must conform to the requirements of section 17-7-502, MCA, in order to be effective.

5-5. Constitutional Amendments.

Article XIV, section 8, of the Montana Constitution provides for constitutional amendment by legislative referendum. The proposed amendment must receive an affirmative vote by two-thirds of the Legislature before it is referred to the people. Article VI, section 10, provides that bills proposing amendments to the Montana Constitution need not be submitted to the Governor for the Governor's signature. Title 13, chapter 27, MCA, contains the general law relating to procedures to be followed by the Secretary of State and other officials when submitting a constitutional amendment (and other ballot issues) to the electorate. Article XIV, section 8, provides that, unless the amendment provides otherwise, the amendment will become effective on July 1 following certification of the election returns.

5-6. Referenda.

Article III, section 5, of the Montana Constitution provides that the people may approve or reject by referendum any act of the Legislature except an appropriation of money. The Legislature may order a proposed law to be voted upon by the people, or the people may petition to so vote. An "act" does not include a joint resolution ratifying an amendment to the United States Constitution (*Hatch v. Murray*, 526 P2d 1369).

Section 13-27-313, MCA, provides that the Attorney General must approve the form of the referendum ballot. When the Legislature orders an act to be referred to the people, the Secretary of State sends a copy of the proposed law to the Attorney General (section 13-27-310, MCA) so that the Attorney General may write an explanatory statement of the measure. At the same time, the Secretary of State asks the Attorney General to approve the ballot form, which is usually prescribed in the act ordering the referendum. Title 13, chapter 27, MCA, Ballot Issues, was generally revised and updated in 1979. The drafter should become acquainted with that chapter.

Usually, the last section of a bill for a referendum is the section ordering a vote of the people. (See Appendix I for a sample referendum bill.)

5-7. Bills Requiring Extraordinary Votes.

Certain types of bills require extraordinary votes in order to become effective. Examples of bills requiring extraordinary votes are:

- (1) a bill to grant to a public entity immunity from suit – two-thirds of each house, Art. II, sec. 18;
- (2) a vetoed bill – two-thirds of each house to override, Art. VI, sec. 10;
- (3) a bill to appropriate highway revenue for nonhighway purposes – three-fifths of each house, Art. VIII, sec. 6;
- (4) a bill creating state debt – two-thirds of each house, Art. VIII, sec. 8;
- (5) a bill to appropriate severance tax trust fund principal – three-fourths of each house, Art. IX, sec. 5;
- (6) a bill to propose calling constitutional convention – two-thirds of all members, Art. XIV, sec. 1; and
- (7) a bill to propose amendment to Montana Constitution – two-thirds of all members, Art. XIV, sec. 8.

A section of a bill giving notice that it requires an extraordinary vote normally comes before the effective date section if one is included. (See Appendix P.)

5-8. Licensing of Professions and Occupations.

Title 2, chapter 8, part 2, MCA, requires that a "sunrise" audit be performed by the Legislative Audit Committee prior to the licensing of any new occupation. The legislative proposal must be submitted to the committee at least 180 days before the first day of the next legislative session.

Bills With Special Provisions

6-1. Bills With Fiscal Impact.

Section 5-4-201, MCA, provides that no bill having an effect on revenues, expenditures, or the fiscal liability of the state or a local government may be reported out of committee without an attached fiscal note estimating the dollar amount of the fiscal impact. The fiscal note requirement does not apply to an appropriation bill carrying a specific dollar amount.

When a bill is reviewed by the Legislative Council staff prior to introduction, its possible fiscal impact is considered. If a fiscal note appears to be needed, a stamp so indicating is affixed to the bill by the Council staff. At the time a bill is introduced, the President of the Senate or the Speaker of the House must determine whether the bill needs a fiscal note. The notation of the Legislative Council helps save the presiding officer time in determining if a fiscal note should be ordered. Upon determination of the need for a fiscal note, the presiding officer requests it from the Budget Director, who is required by law to return the note within 6 days.

The drafter can simplify the process of judging fiscal impact by keeping the fiscal note requirement in mind when drafting bills and indicating on the bill draft that a fiscal note may be required. (See Bill Drafter Checklist, Appendix S.)

The fiscal note is attached to the bill, and the committee considers it with the bill. If a bill is introduced without a request for a fiscal note, the sponsor, the committee considering the bill, or the majority of the house considering the bill on second reading may request the presiding officer to request a fiscal note.

If a sponsor disagrees with a fiscal note, the sponsor may request a sponsor's fiscal note under section 5-4-204, MCA.

A bill's fiscal impact may also necessitate the inclusion of a special effective date. Under section 1-2-201, MCA, unless a

different time is prescribed, all bills except appropriation bills and those portions of bills containing statutes providing for taxation or the imposition of a fee on motor vehicles are effective on October 1 following passage and approval. Appropriation bills become effective on July 1, and statutes providing for taxation or the imposition of a fee on motor vehicles become effective on January 1 following passage and approval. (See Effective Date, section 4-26.) Frequently, a nonappropriation bill will have such an impact on local or state finances as to make it highly desirable to provide an effective date that coincides with the beginning of the fiscal year (usually July 1). See 39 A.G. Op. 29, discussing the problems associated with a bill increasing the county road tax levy without providing a July 1 effective date.

Sections 1-2-112 and 1-2-113, MCA, are also concerned with fiscal impact. These statutes require that any law directing a local government unit or school district to perform an activity or provide a service or facility that will require additional funds contain a specific means of financing such activity or service. Therefore, a drafter must be careful, when drafting bills concerning additional local government or school district services or activities, to include provision for an additional mill levy or remittance of state funds sufficient to fund the new activity. The statute provides that such a law is not effective until this specific means of financing is provided.

6-2. Bills Granting Rulemaking Authority.

(1) In highly complex, technical fields where the degree of specificity required is not considered appropriate for comprehensive statutory treatment or when interim authority is necessary to provide for continuing compliance with ever-changing federal law and regulations, the requestor may wish to delegate rulemaking authority to an Executive Branch agency. Rules have the force of law (i.e., an enforceable prohibition or mandate of behavior or activity) only if:

(a) adopted under an express grant of legislative authority;

(b) adopted under statutory guidelines sufficiently specific to satisfy the constitutional separation of powers requirement for a delegation of rulemaking authority;

(c) adopted in compliance with the procedures outlined in Title 2, chapter 4, part 3, MCA; and

(d) consistent with and reasonably necessary to effectuate the purpose of the implemented statutes (section 2-4-305(6), MCA).

(2) Items (a) and (b) above are most significant from the bill drafting standpoint. An express grant of rulemaking authority is created for a new body of law by stating substantially that "The department may [shall] adopt rules to implement [sections 1 through 12]". An existing program that already includes an express grant of rulemaking authority may be modified or expanded by amendment of MCA sections to which the existing express grant of authority applies or by enactment of a new bill section along with a codification instruction making the existing authority apply to the new bill section. (See Code Placement & Applicability – Codification Instruction, section 4-19.)

(3) A mere implication of power to adopt rules gleaned from implemented statutes because of a perceived necessity for rules is not sufficient to allow legislative rules, i.e., rules having force of law (section 2-4-102(11)(a), MCA). Moreover, even a clearly expressed grant of rulemaking authority will be ineffective if it is so broad and unrestricted as to constitute an unconstitutional delegation of legislative authority. (See *In re Gate City S&L Ass'n*, 182 M 361, 597 P2d 84.)

(4) Basic policy and guidelines must be determined by the Legislature as set forth in statutory restrictions, standards, and criteria to be followed by the agency in adopting rules. For further discussion of constitutional problems related to delegation of authority and separation of powers generally, see Chapter 1.

(5) In an area in which the agency does not have existing rulemaking authority, if it is necessary to initiate rulemaking proceedings before the normal October 1 effective date (see discussion of the effective dates at section 4-26), the express rulemaking authority section and all sections of the bill to be implemented through such authority should be made effective before the time when initiation of rulemaking proceedings is contemplated.

(6) A bill may also specifically repeal or direct amendment or adoption of an administrative rule (see section 2-4-412, MCA; Appendix K).

6-3. Statements of Intent.

Section 5-4-404, MCA, provides that the Legislature shall enact a Joint Rule that sets forth a procedure "by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the Legislature which sequentially considers the subject bill and may be amended in the same manner as the bill." The 1979 Legislature

first adopted such a rule. (See Chapter 70 of the Joint Rules.) The following key language appears in Rule 70-10 of the Joint Rules:

This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. A statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

The statement of intent is a vehicle by which the Legislature may provide a detailed analysis of the problems that stimulated the bill's introduction and enactment and the approach that the state agency is expected to take in resolving those problems. (See statements of intent appearing in compiler's comments in MCA Annotations for sections 37-4-321, 37-50-203, and 37-65-306, MCA.) The statement should clearly delineate the subject matter of rules anticipated by the Legislature, with a view toward avoiding excessive Executive Branch agency discretion.

The statement should not, however, be viewed as a substitute for sufficient statutory guidelines. An agency should not be given a very broad grant of authority in the bill with only the statement of intent providing guidelines for exercise of discretion. The statement is not enacted as part of the law itself, and a problem of overdelegation of legislative authority could still be created if the enacted bill does not itself provide sufficient standards and criteria to guide the agency in its administration of the act.

Since the statement of intent is not part of the law, a provision in the statement that purports to act as a rule of law mandating or prohibiting certain actions or imposing a condition or limitation is likely to be ineffective. See 39 A.G. Op. 68 (1982), in which the Attorney General ruled that a fee increase provided by statute must be collected even though the statement of intent purported to condition collection upon enactment (in a different bill) of an appropriation for an additional agency employee whose salary and expenses would be paid through the fee increase.

Since each component of the Legislature that considers the bill must also consider the statement of intent, the statement must be included with the introduced bill for any bill that requires one. If a bill is found to require a statement of intent at any time in the legislative process, a statement may be added under the procedure for amending a bill. The statement may be amended in the same manner as the bill. This ensures compliance with section 5-4-404, MCA, and the Joint Rules.

6-4. Bills Creating a New Agency.

Title 2, chapter 15, MCA, contains a reference to each agency in the Executive Branch created by statute. In the MCA, the creation of an agency is separated from the functions of that agency.

Whenever an Executive Branch agency is created by bill, one or more sections should deal with its creation and internal organization. These sections will be codified in Title 2.

In addition, the bill must contain a definition section that includes a definition of the new agency.

NEW SECTION. **Section 2.** Definitions. In (sections 2 through 12), the following definitions apply:

- (1) "Board" means the board of dogcatchers provided for in (section 1).
- (2) "Dogcatcher" means

In this example, "[sections 2 through 12]" will be changed to "this chapter", "this part", or "sections ___ through ___" (MCA), as appropriate, and "[section 1]", which creates the board, will become a code section number in Title 2, chapter 15, MCA. The definition section will be codified along with the part of the bill dealing with the functions, powers, and duties of the new agency.

The same rule applies to the creation of any new Legislative or Judicial Branch agency. For example, the composition, terms, and officers of the Environmental Quality Council are provided for in Title 5, MCA, Legislative Branch, because the Council is a legislative agency. However, the functions of the Council are codified in Title 75, MCA, Environmental Protection. (See sections 5-16-101 through 5-16-105, MCA, and sections 75-1-301 through 75-1-324, MCA.)

Whenever a drafter is dealing with a change of an agency's functions or duties, the statutes relating to the creation and composition of the agency must be checked as well as the substantive area of the law.

Chapter 7

Resolutions

The only type of instrument other than a bill that may be introduced in either house of the Legislature is a resolution.

7-1. Simple Resolution.

A simple resolution may be used to amend the rules of or to provide for the internal affairs of the house adopting it. A simple resolution does not require three readings or a roll call vote as does a bill or joint resolution.

7-2. Joint Resolution.

A joint resolution is effective upon passage by both houses and need not be submitted to the Governor for the Governor's signature (Article VI, section 10, Montana Constitution). Some common uses of joint resolutions are to:

- (1) send a request to a state agency, Congress, or the President;
- (2) express sympathy to relatives of a deceased legislator;
- (3) amend or adopt Joint Rules;
- (4) ratify or propose amendments to the U.S. Constitution;
- (5) request repeal, amendment, or adoption of Executive Branch administrative rules (section 2-4-412, MCA);
- (6) express support for or disapproval of federal legislation;
- (7) prescribe duties, compensation, etc., of legislative employees;
- (8) request an interim study; or

(9) approve construction of a state building (sections 18-2-102 and 20-25-302, MCA).

The law provides that disasters and emergencies be dealt with by the Legislature by joint resolution (sections 10-3-302(3), 10-3-303(3) and (4), 10-3-505(5), and 90-4-310, MCA). A negotiated labor settlement may also be submitted by joint resolution (section 39-31-305(3), MCA).

Resolutions do not have the force of law. In *Gildroy v. Anderson*, 507 P2d 1069, the Supreme Court said, "The effect and validity of a joint legislative resolution must be decided upon a consideration of the purpose intended to be accomplished and in light of the applicable provisions of the Montana Constitution." The court went on to say, "A joint resolution is not a general law and cannot be used to control the discretion of the governor."

The format of resolutions has been prescribed by custom. In resolutions, it would seem that even the unity of subject rule need not be followed, since the resolution does not have the binding effect of a law. Customary formats are presented in the appendix and must be followed by the drafter.

The preamble of a resolution is identical to the preamble of a bill. It usually begins with "WHEREAS" and states the purpose of or reason for the resolution.

In a resolution, a resolving clause takes the place of the enacting clause of a bill. In the past, the body of a resolution has consisted of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED". The drafter may wish to number the paragraphs, as shown in the second example in Appendix N, as an alternative, rather than continue to repeat the rather flowery, archaic language.

Standard capitalization rules are followed when drafting a resolution.

Bill Amendments

8-1. Introduction.

Bill amendments are prepared by the Legislative Council staff, committee staffs, lobbyists, or the legislators themselves. Printed forms are available for use by the standing committees and the committees of the whole. The first draft of an amendment to be presented to a committee should be typed on plain white paper. If the amendment is made by the committee, it is presented in a Standing Committee Report, as shown in section 8-5.

The amendment must identify the specific copy of the bill to be amended, i.e., introduced (white), second reading (yellow), third reading (blue), or reference bill (salmon).

8-2. Reminders When Amending Bills.

(1) Amend the title if the amendment to the bill requires change in the title.

(2) Amend the catchline, if necessary.

(3) If subsection numbers are changed, read the entire bill for internal references to the former subsection numbers. Also check the *Internal Reference Report* unless the provision being amended is a new section. (See section 1-7.)

(4) If additional sections are being repealed, be sure to check the *Internal Reference Report* and amend any sections affected.

(5) If bill section numbers are changed, check the entire bill for internal references to those sections.

(6) Check the entire bill for any references to terms or figures that are being changed or provisions that are being deleted.

(7) Do not forget that Article V, section 11, of the Montana Constitution states that a bill may not be altered or amended on its passage through the Legislature so as to change its original purpose. If the amendment would entirely change the original direction of the bill or enter a new subject area not covered by the original bill, a constitutional problem is likely.

8-3. Substitute Bill.

If the proposed amendment is very extensive, it may be easier to rewrite the entire bill. This is called a substitute bill. The Joint Rules provide that if the amendment is relevant to the title and subject matter of the original bill and is so extensive that a standard amendment would be long and difficult to comprehend, the bill may be amended by striking all of the bill following the enacting clause and substituting an entirely new bill. (See Appendix O.)

8-4. Amendment Language Samples.

(1) Amend title

1. Title, lines 5 through 7.

Following: "A PERSON"

Strike: remainder of lines 5 through 7 in their entirety

Insert: "WHO HAS SERVED A SENTENCE"

(2) Insert material only

1. Page 1, line 23.

Following: "statement"

Insert: "in simple language"

(3) Insert material following stricken material

1. Page 1, line 7.

Following: "\$5"

Strike: "four percent of the payment due"

Insert: "4%"

2. Page 2, line 10.

Following: "12%"

Insert: "12%"

(4) Insert material and renumber

1. Page 4.

Following: line 1

Insert: "NEW SECTION. Section 2. Restrictions on bargaining. Nothing in this chapter requires or allows a board of trustees of a school district to bargain collectively upon any matter other than matters specified in 39-31-305."

Renumber: subsequent sections

2. Page 5.

Following: line 3

Insert: **"Section 4.** Section 53-6-205, MCA, is amended to read:

"53-6-205. Departmental reports to legislature. The department shall achieve full implementation of the program, as set forth in this chapter and related sections, no later than January 1, 1994."

Renumber: subsequent sections

(5) Strike and insert columnar figures in appropriation bills

1. Page 12, line 20.

Strike: "45,000 47,000"

Insert: "44,954 46,955"

(6) Strike material only

1. Page 1, line 22.

Strike: "by"

(if there is only one "by" in line 22)

2. Page 2, line 24.

Following: line 23

Strike: "agency"

3. Page 4, line 23.

Following: "public,"

Strike: "the"

(if there is more than one "the" in the line; if not, use form 1 above)

4. Page 5, line 16.

Strike: "doctor, engineer, lawyer, ACCOUNTANT."

(show material to be stricken exactly as it appears in the bill)

5. Page 3, lines 4 and 5.

Strike: "poultry" on line 4 through "livestock" on line 5

(7) Strike certain lines in their entirety

1. Page 1, line 21 through page 2, line 1.

Following: "vagrancy."

Strike: page 1, line 21 through page 2, line 1 in their entirety

(8) Strike a long passage, section, or subsection in its entirety

1. Page 1, line 11.

Strike: section 3 in its entirety

2. Page 2, line 24 through page 3, line 15.

Strike: subsection (e) in its entirety

3. Page 4, line 21 through page 5, line 5.

Following: "act" on line 21

Strike: remainder of line 21 through "day" on page 5,
line 5

(9) Strike and renumber subsequent sections or subsections

1. Page 2, lines 1 and 2.

Strike: section 10 in its entirety

Renumber: subsequent sections

2. Page 3, line 21 through page 4, line 2.

Following: line 20

Strike: subsections (a) and (b) in their entirety

Renumber: subsequent subsections

3. Page 4, line 15.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

When an amendment results in several levels of outlining being changed, use the following form:

4. Page 5, line 1.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

Page 5, line 2.

Strike: "(a)"

Insert: "(i)"

Renumber: subsequent subsections

Page 5, line 3.

Strike: "(i)"

Insert: "(A)"

Renumber: subsequent subsections

If a section or subsection is renumbered by amendment, check the entire bill to see if internal references are affected and need to be amended.

(10) Strike and replace a section or subsection

1. Page 12, lines 5 through 21.

Strike: section 13 in its entirety

Insert: **"Section 13.** Section 1-1-101 is amended to
read:

"1-1-101. Definition of law. "Law" is"

2. Page 14, lines 7 through 21.

Strike: subsection (c) in its entirety

Insert: "(c) A person who violates this section is guilty of
a misdemeanor."

If a section or subsection is renumbered by amendment, check the entire bill to see if internal references are affected and need to be amended.

(11) More than one amendment on the same line

1. Page 12, line 23.
Following: "registrant"
Insert: "or licensee"
Following: "proper"
Strike: "inspection"

(12) Same amendment in several places

1. Page 2, line 13.
Page 3, lines 4 and 21.
Strike: "July"
Insert: "August"

(13) Amending statement of intent

1. Statement of intent, page 1, line 14.
Following: "department"
Strike: "may"
Insert: "shall"

(14) Correct capitalization

1. Page 13, line 12.
Following: line 11
Strike: "the"
Insert: "The"

(15) Correct punctuation

1. Page 18, line 10.
Following: "desires"
Strike: "."
Insert: ";

(16) Amend a bill as a substitute bill; strike all of the bill following the enacting clause

1. Title, lines 5 through 15.
Following: "'AN ACT"
Strike: lines 5 through 15 in their entirety
Insert: "PROVIDING THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED A SENTENCE AND IS NO LONGER UNDER STATE SUPERVISION MAY BE GRANTED THE PRIVILEGE OF OCCUPATIONAL LICENSURE; DEFINING LICENSURE AS A PRIVILEGE."

2. Pages 1 through 52.
Strike: everything following the enacting clause
Insert: "NEW SECTION. Section 1. Purpose. It is the public policy of the legislature of the state of Montana to

NEW SECTION. Section 2. Licensure defined as privilege. Licensure is a privilege to be granted or revoked as a police power of the state

NEW SECTION. **Section 3.** Restoration of rights to felons. Laws for the punishment of crime must be founded on the principles of prevention and reformation

NEW SECTION. **Section 4.**"

(17) Amending amendments

Amend House Committee on Local Government amendment dated March 11, 1993, as follows:

Amendment No. 1

In second Insert, following: "(b)"

Strike: "105%" through "year"

Insert: "the total number of mills levied in the prior year"

(18) Amending both amendments and bill

Amend House Committee on Local Government amendment dated March 11, 1993, as follows:

Amendment No. 2

Following: "appropriated to the department" in inserted section 4

Strike: "\$200"

Insert: "\$2"

AND THAT SENATE BILL NO. 242, THIRD READING COPY, BE FURTHER AMENDED AS FOLLOWS:

Page 16, line 6.

Strike: "contingency"

8-5. Standing Committee Report.

(Examples)

SENATE

Date _____

Mr.

Ms. President

We, your Committee on Highways, having had under consideration Senate Bill No. 123, respectfully report as follows: That Senate Bill No. 123, introduced bill, be amended as follows:

OR

HOUSE OF REPRESENTATIVES

Date _____

Mr.

Ms. Speaker

We, your Committee on Highways, having had under consideration House Bill No. 123, entitled "AN ACT AUTHORIZING RIGHT TURNS AT INTERSECTIONS ON RED OR STOP SIGNALS; AND AMENDING SECTION 61-8-207, MCA", respectfully report as follows: That House Bill No. 123, introduced bill, be amended as follows:

8-6. Conference Committee Report.

If the Senate and House cannot agree on an amendment (or series of amendments), either house may request a Conference Committee. The format of a Conference Committee Report is determined by the Rules Committee.

(Examples)

March 18, 1993

JOINT CONFERENCE COMMITTEE REPORT NO. 1

ON HOUSE BILL NO. 11

MR. (MS.) PRESIDENT AND MR. (MS.) SPEAKER:

We, your Joint Conference Committee on House Bill No. 11, met March 18, 1993, and considered:

1. Senate Committee on Judiciary Amendments to the third reading copy, dated March 5, 1993; and
 2. Senate Committee of the Whole Amendments to the third reading copy, dated March 9, 1993.
- (1) We recommend that House Bill No. 11, reference copy, be amended as indicated in the INSTRUCTIONS.

(If it is a Free Conference Committee Report, the committee may recommend partial acceptance of an amendment or further amendment of the bill.)

- (2) We recommend that the Conference Committee Report to House Bill No. 11 be adopted.

INSTRUCTIONS:

1. Page 5, lines 4 through 17.

Strike: section 6 in its entirety

2. Page 6, line 1.
Following: "tuba,"
Insert: "thumb piano,"

3. Page 7, line 12.
Following: "clarinet,"
Strike: "kazoo,"

OR

(If there is no reference copy)

INSTRUCTIONS:

1. Strike: House Committee of the Whole amendment dated 3/27/93, 12:55 p.m., sponsored by Novak, in its entirety

Note: The effect of striking a previous amendment is that the bill is restored to its wording prior to that amendment (i.e., material stricken by the previous amendment is reinserted, and material inserted by the previous amendment is stricken).

2. Amend House Committee of the Whole amendment dated 3/27/93, 1:32 p.m., sponsored by Dixon, as follows:

Amendment No. 4
In second Insert, following: "kazoo,"
Strike: "cymbals" through "tuba"
Insert: "glockenspiel"

FOR THE HOUSE:

(Presiding Officer's Name)

(Name)

(Name)

FOR THE SENATE:

(Presiding Officer's Name)

(Name)

(Name)

In the past, usage of the terms "accede" and "recede" has caused confusion. For this reason, such usage is discouraged. Note that any change made by the Conference Committee must be contained in the INSTRUCTIONS.

8-7. Statement of Intent.

If a standing committee that hears a bill adds a statement of intent, the accepted form for attaching the statement is to:

(1) type the words "Statement of Intent Attached" between the "Do pass" or "Do pass, as amended" notation and the presiding officer signature line on the Standing Committee Report form; and

(2) type the statement on a separate page with the heading "Statement of Intent Re: SB/HB ____", using the committee report form and attach it behind the committee report.

Chapter 9

Selected Provisions Relating to Bill Drafting

The following is a list of constitutional, statutory, and Joint Rule provisions of which a bill drafter should be especially knowledgeable.

9-1. Montana Constitution.

Article II. Declaration of Rights

Section 4. Equal protection

Section 5. Freedom of religion

Section 7. Freedom of speech, expression, and press

Section 18. State subject to suit

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges

Article III. General Government

Section 1. Separation of powers

Section 5. Referendum

Article V. The Legislature

Section 11. Bills

Section 12. Local and special legislation

Article VI. The Executive

Section 10. Veto power

Article VIII. Revenue and Finance

Section 1. Tax purposes

Section 2. Tax power inalienable

Section 6. Highway revenue nondiversion

Section 8. State debt

Section 9. Balanced budget

Article XIII. General Provisions

Section 1(3). No retrospective law

Article XIV. Constitutional Revision

Section 8. Amendment by legislative referendum

9-2. Montana Code Annotated.

Title 1 -- General Laws and Definitions, especially:

Chapter 1, part 2 -- General Definitions Used in Code
Chapter 2 -- Statutory Construction
Chapter 11 -- Publication and Updating of Code
Title 2, chapter 4, part 4 -- Legislative Review of
Administrative Rules
Title 5, chapter 4 -- Legislative Branch -- Bills
Title 13, chapter 27 -- Ballot Issues

9-3. Rules of the Montana Legislature.

Joint Rules

Chapter 40. Legislation

Chapter 70. Statement of Legislative Intent

Chapter 10

Computerized Bill Drafting and Processing

10-1. Introduction.

The Legislative Council uses an integrated computerized system that combines microcomputer and mainframe computer word processing software to perform certain tasks, such as bill drafting, bill processing, code updating, and searching. Text of the Montana Constitution and the Montana Code Annotated is maintained as a searchable data base on the state mainframe computer.

10-2. Framing a Search.

Because the computer cannot think for itself, it is important when considering whether or not to request a search that the searcher have a good idea of the words or phrases the legislative drafter might have used to express the concept being searched. For example, if the search is for all sections of the Code providing statutes of limitations, that phrase actually may never have been used. Instead, the drafter might have said, "suit must be brought within 6 years", "if the action is not brought within 6 years, it is barred", or even "the period of limitations is 6 years". Similarly, a search for sections that define criminal conduct might include the following: "felony", "misdemeanor", "fine", "may be fined", "may be imprisoned", "punishable by", "it is unlawful to . . .", "guilty", "upon conviction of . . .", and possibly "crime", "criminal", or "offense".

Words may be used in senses other than the one to be searched. For example, a drafter might wish to search for material relating to arrest or search warrants. A search of the word "warrant" alone would include not only search and arrest warrants but warrants issued by the State Auditor, warrants of resurvey, stock warrants, and the verb form "if conditions warrant".

Some concepts are nearly impossible to search for, such as "conflict of interest". One can imagine how many ways a drafter might phrase provisions in this area.

Other concepts are so narrow in scope that all or most references are likely to appear in one title. A search may be made of only certain designated portions of the Code, or certain portions of the Code may be excluded from the search.

The Legislative Council staff will frame a search through this system for other state agencies and the public. A fee is charged for this service. Persons having access to the "LEXIS" legal research system may conduct their own searches of the Code using that system, or a search may be done on the CD-ROM version of the Code.

10-3. Council Drafting System.

The Legislative Council staff drafts most bills on microcomputers, using WordPerfect software. To enhance the bill drafting process, drafters can retrieve existing code sections from the code data base (stored on the state's mainframe computer) directly into their WordPerfect bill draft documents.

By means of special format control codes, selected text can be automatically overstricken, underscored, or capitalized. Standard material in a bill, such as bill identification, the enacting clause, and each introductory amending clause, is automatically inserted into the bill draft document.

Completed bill drafts are stored in a text data base on the state's mainframe computer where they can be accessed with TextDBMS software during the amendment and enrolling processes. TextDBMS software provides page numbering, sequential numbering of section catchlines, and publishing control code features used in preparing camera-ready copy for publishing.

Following the legislative session, successful bills are processed and merged into the existing code data base to create updated text of the Montana Code Annotated. This text is maintained as a searchable data base accessible by TextDBMS search software.

In addition, text from the Session Law data base and the Code data base is processed to prepare camera-ready copy used to publish the Session Laws and the Montana Code Annotated.

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LC 0001/01

24 (3) A justice or judge of a court of record may not act
25 as administrator or executor of any estate for compensa-

2 **Section 2.** Section 3-1-603, MCA, is amended to read:

8 (2) A partner of a municipal court judge may act as
9 attorney or counsel in any court of this state except the
0 municipal court of the attorney's partner."

12 **"3-1-604. Restrictions on municipal court judges. A**
13 municipal court judge may not practice law before the
14 judge's own municipal court or hold office in a political
15 party during the judge's term of office."

16 - End -

87

LC 0002/01

24 (b) all proceeds of bonds or notes issued under 75-10-623
25 and all interest earned on proceeds thereof; and

APPENDIX A
SAMPLE — BILL WITH AMENDATORY MATERIAL
TRANSFERRING FUNDS

1 (c) revenues from penalties or damages collected under
2 the federal Comprehensive Environmental Response, Compen-
3 sation, and Liability Act of 1980, as amended in 1986
4 (CERCLA).

5 (3) ~~Appropriations Except as provided in subsection (6).~~
6 ~~appropriations~~ may be made from the hazardous waste/CERCLA
7 account only for the following purposes and subject to the
8 following conditions:

9 (a) funds are statutorily appropriated, as provided in
10 17-7-502(4), to the CERCLA match debt service account
11 necessary to make principal, interest, and premium payments
12 due on CERCLA bonds;

13 (b) not more than one-half of the interest income
14 received for any biennium from the resource indemnity trust
15 fund may be appropriated on a biennial basis for:

16 (i) implementation of the Montana Hazardous Waste Act,
17 including regulation of underground storage tanks and the
18 state share to obtain matching federal funds;

19 (ii) implementation of Title 75, chapter 10, part 6,
20 pertaining to state assistance to and cooperation with the
21 federal government for remedial action under CERCLA;

22 (iii) expenses of the administration of the environmental
23 sciences division of the department in administering and
24 overseeing the implementation of Title 75, chapter 10, parts
25 4 and 6; and

APPENDIX A
SAMPLE – BILL WITH AMENDATORY MATERIAL
TRANSFERRING FUNDS

89

1 (iv) state expenses relating to investigation and
2 remedial action for any hazardous substance defined in
3 75-10-602; and

4 (c) to the extent funds are available after the
5 appropriations in subsections (3)(a) and (3)(b), the
6 department may, as appropriate, seek authorization from the
7 legislature or, when the legislature is not in session,
8 through the budget amendment process provided for in Title
9 17, chapter 7, part 4, to spend funds for:

10 (i) state participation in remedial action under section
11 104 of CERCLA;

12 (ii) state costs for maintenance of sites at which
13 remedial action under CERCLA has been completed; and

14 (iii) the state share to obtain matching federal funds
15 for underground storage tank corrective action.

16 (4) For the purposes of subsection (3)(c), the legisla-
17 ture finds that a need for state special revenue to obtain
18 matching federal funds for underground storage tank cor-
19 rective action or for remedial action under section 104 of
20 CERCLA constitutes a serious unforeseen and unanticipated
21 circumstance for the purpose of meeting the definition of
22 "emergency" in 17-7-102. The legislature further finds that
23 the inability of the department to match such federal funds
24 as may become available would seriously impair the functions
25 of the department in carrying out its responsibilities under

APPENDIX A
SAMPLE -- BILL WITH AMENDATORY MATERIAL
TRANSFERRING FUNDS

1 Title 75, chapter 10, parts 4 and 6.

2 (5) There is no dollar limit to the hazardous
3 waste/CERCLA account. ~~Unused~~ Except as provided in subsec-
4 tion (6), unused balances remain in the account until such
5 time as appropriated by the legislature for the purposes
6 specified in this section.

7 (6) On or before June 30, 1993, the department shall
8 transfer from the hazardous waste/CERCLA account to the
9 general fund an amount not to exceed \$1 million."

10 NEW SECTION. **Section 2. Effective date - termination.**
11 [This act] is effective on passage and approval and
12 terminates July 1, 1993.

13 -End-

91

LC 0003/01

21 WHEREAS, the Montana Supreme Court, by its orders
22 governing the disciplining of persons admitted to practice
23 law in Montana, also established grievance committees in
24 each judicial district to assist the Commission on Practice
25 in its investigation and processing of complaints of

APPENDIX B
SAMPLE – BILL WITH PREAMBLE

1 misconduct by attorneys in Montana; and

2 WHEREAS, sections 37-61-304 through 37-61-306, MCA, also
3 address procedures for investigating and processing com-
4 plaints of misconduct by attorneys in Montana; and

5 WHEREAS, the procedures set forth in sections 37-61-304
6 through 37-61-306, MCA, are inconsistent with the procedures
7 established by the Montana Supreme Court in its orders.

8 THEREFORE, the Legislature of the State of Montana finds
9 it is appropriate to repeal these inconsistent sections.

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1. Repealer.** Sections 37-61-304,
13 37-61-305, and 37-61-306, MCA, are repealed.

14 NEW SECTION. **Section 2. Effective date.** [This act] is
15 effective on passage and approval.

16

-End-

93

LC 0004/01

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT
5 OF REVENUE, IN COMPUTING THE RETAIL SELLING PRICE OF LIQUOR,
6 TO DESIGNATE AND ESTABLISH A LESSER RETAIL SELLING PRICE
7 ON ALL LIQUOR MANUFACTURED, DISTILLED, RECTIFIED, BOTTLED,
8 OR PROCESSED IN MONTANA THAN IS DESIGNATED AND ESTABLISHED
9 FOR LIQUOR IMPORTED FROM WITHOUT THE STATE."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 In computing the selling price of all liquor sold and
14 delivered by the Montana department of revenue, the
15 department shall establish the state markup on all liquor
16 either manufactured, distilled, rectified, bottled, or
17 processed in Montana at 10% less than the amount of markup
18 on products of out-of-state manufacturers, distillers,
19 rectifiers, processors, or bottlers.

20 - End -

LC 0005/01

2 INTRODUCED BY _____

4

9

11 NEW SECTION. **Section 1. Setting priorities and selecting**
12 **projects.** The commission shall establish priorities and
13 select and designate segments for construction and
14 reconstruction on federal-aid interstate and federal-aid
15 primary and state highway systems. The commission shall use
16 information gathered or discovered by and documents prepared
17 by the department, and department officials and employees
18 shall provide assistance and advice.

20 **"60-2-201. General powers of department.** (1) The depart-
21 ment may plan, lay out, alter, construct, reconstruct,
22 improve, repair, and maintain highways on the federal-aid
23 systems and state highways according to priorities estab-
24 lished by and on projects selected and designated by the
25 commission.

SAMPLE — BILL WITH AMENDATORY AND NEW MATERIAL

1 (2) The department may cooperate and contract with
2 counties and municipalities to provide assistance in
3 performing these functions on other highways and streets.

4 (3) The department may review and approve projects for
5 the installation of public works on state highway rights-
6 of-way and authorize a county or municipality to let
7 contracts related to such improvements.

8 (4) The department shall adopt necessary rules for the
9 construction, repair, maintenance, and marking of state
10 highways and bridges."

11 NEW SECTION. **Section 3. Codification instruction.** [Sec-
12 tion 1] is intended to be codified as an integral part of
13 Title 60, chapter 2, part 1, and the provisions of Title
14 60 apply to [section 1].

15 NEW SECTION. **Section 4. Effective date.** [This act] is
16 effective on passage and approval.

17

-End-

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18 - End -

99

LC 0007/01

19 - End -

101

LC 0008/01

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY
5 TO THE DEPARTMENT OF LIVESTOCK TO SATISFY A FINAL JUDGMENT
6 IN CAUSE NO. 79-14-GF, UNITED STATES DISTRICT COURT FOR THE
7 DISTRICT OF MONTANA, GREAT FALLS DIVISION, IF THE CASE IS
8 UPHOLD ON APPEAL."

11 NEW SECTION. **Section 1. Appropriation.** There is ap-
12 propriated from the general fund to the department of
13 livestock \$391,500 for full payment of all obligations and
14 judgments against the defendants in Cause No. 79-14-GF,
15 United States district court, district of Montana, Great
16 Falls division, entitled M. P. Doran, et al., Plaintiffs,
17 v. James W. Glosser, et al., Defendants. This appropriation
18 is effective only if the United States district court
19 judgment filed and entered on March 23, 1982, is expressly
20 upheld and made final following appeal to the United States
21 court of appeals, ninth circuit. Any unexpended portion of
22 this appropriation reverts to the general fund.

23 - End -

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LC 0009/01

20 ~~NEW SECTION.~~ **Section 3. Validation.** All bonds issued by
21 any public body of this state and related proceedings,
22 regardless of any defects in those proceedings, are
23 validated. Bonds of a public body issued under the authority
24 of proceedings taken prior to October 1, 1993, are valid
25 whether issued before or after that date.

APPENDIX G
SAMPLE — BOND VALIDATING ACT

1 NEW SECTION. **Section 4. Saving clause.** [This act] does
2 not apply to any action instituted before October 1, 1993,
3 in which the validity of certain proceedings or bonds is
4 at issue.

5

-End-

APPENDIX H 105
SAMPLE – BILL FOR CONSTITUTIONAL AMENDMENT

53rd Legislature

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE
5 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V,
6 SECTION 6, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
7 LEGISLATURE SHALL MEET IN ANNUAL SESSIONS."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Article V, section 6, of The Constitution of
11 the State of Montana is amended to read:

12 "Section 6. **Sessions.** The legislature shall meet each
13 ~~odd numbered year in regular session of not more than 90~~
14 ~~legislative days be a continuous body for 2-year periods~~
15 ~~beginning when newly elected members take office. Any~~
16 ~~business, bill, or resolution pending at adjournment of a~~
17 ~~session shall carry over with the same status to any other~~
18 ~~session of the legislature during the biennium. The~~
19 ~~legislature shall meet at least once a year in regular~~
20 ~~session of not more than 60 legislative days. Any legisla-~~
21 ~~ture may increase the limit on the length of any subsequent~~
22 ~~session. The legislature may be convened in special sessions~~
23 ~~by the governor or at the written request of a majority of~~
24 ~~the members."~~

25 NEW SECTION. **Section 2.** Submission to electorate. This

1 amendment shall be submitted to the qualified electors of
2 Montana at the general election to be held in November 1994
3 by printing on the ballot the full title of this act* and
4 the following:

5 [] FOR annual sessions.

6 [] AGAINST annual sessions.

7 - End -

*Note: The guidelines pertaining to brackets (see sections 3-2 and 4-12) do not apply to noncodified sections of ballot issues.

APPENDIX H
SAMPLE -- BILL FOR CONSTITUTIONAL AMENDMENT

107

53rd Legislature

LC 0011/01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE
5 QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II,
6 SECTION 18, OF THE MONTANA CONSTITUTION TO PROVIDE THAT THE
7 LEGISLATURE MAY DETERMINE WHEN THE STATE OR ITS SUBDIVISIONS
8 MAY NOT BE SUED; AND PROVIDING AN EFFECTIVE DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Article II, section 18, of The Constitution of
12 the State of Montana is amended to read:

13 "Section 18. **State subject to suit.** The state, counties,
14 cities, towns, and all other local governmental entities
15 shall have no immunity from suit for injury to a person or
16 property, except as may be specifically provided by law by
17 a two-thirds vote of each house of the legislature. This
18 provision shall apply only to causes of action arising after
19 July 1, 1973."

20 NEW SECTION. **Section 2. Effective date.** If approved by
21 the electorate, this amendment is effective September 1,
22 1995.

23 NEW SECTION. **Section 3. Submission to electorate.** This
24 amendment shall be submitted to the qualified electors of
25 Montana at the general election to be held in November 1994

1 by printing on the ballot the full title of this act* and
2 the following:

3 [] FOR allowing the legislature to determine sovereign
4 immunity.

5 [] AGAINST allowing the legislature to determine
6 sovereign immunity (i.e., for continuing to
7 prohibit sovereign immunity).

8 -End-

 *Note: The guidelines pertaining to brackets (see sec-
tions 3-2 and 4-12) do not apply to noncodified sections
of ballot issues.

109

LC 0012/01

3

15

22 **Section 15. State prohibited from levying property tax -**
23 **local option.** The legislature is prohibited from imposing
24 a tax on the value of real or personal property. A local
25 government unit may, at its option, impose a tax on real

1 and personal property to defray the expenses of the local
2 government unit.

3 **Section 3.** Article VIII of The Constitution of the State
4 of Montana is amended by adding a new section 16 that reads:

5 Section 16. **Sales tax.** The state shall levy a general
6 sales tax of up to 5% to recover revenue losses because of
7 the provisions of section 15.

8 NEW SECTION. **Section 4. Submission to electorate.** The
9 amendments and repealers set forth in sections 1 through 3
10 shall be submitted to the qualified electors of Montana at
11 the general election to be held in November 1994 by printing
12 on the ballot the full title of this act* and the following:

13 [] FOR prohibiting state-imposed property taxes, allow-
14 ing local governments to impose property taxes, and
15 requiring a state sales tax to recover revenue los-
16 ses.

17 [] AGAINST prohibiting state-imposed property taxes, al-
18 lowing local governments to impose property taxes,
19 and requiring a state sales tax to recover revenue
20 losses.

21 -End-

*Note: The guidelines pertaining to brackets (see sec-
tions 3-2 and 4-12) do not apply to noncodified sections
of ballot issues.

APPENDIX I
SAMPLE – REFERENDUM

111

53rd Legislature

LC 0013/01

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RAISING THE LEGAL
5 DRINKING AGE TO 21; PROVIDING THAT THE PROPOSED ACT BE
6 SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING
7 SECTION 16-3-301, MCA; AND PROVIDING AN EFFECTIVE DATE."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 16-3-301, MCA, is amended to read:

11 **"16-3-301. Unlawful purchases, sales, or deliveries.** (1)

12 It shall be unlawful for a licensed retailer to purchase
13 or acquire beer from anyone except a brewer or wholesaler
14 licensed under the provisions of this code.

15 (2) It shall be unlawful for any licensee, his or her
16 employee or employees, or any other person to sell, deliver,
17 or give away or cause or permit to be sold, delivered, or
18 given away any alcoholic beverage to:

19 (a) any person under the age of ~~19~~ 21 years;

20 (b) any intoxicated person or any person actually,
21 apparently, or obviously intoxicated.

22 (3) Any minor or other person who knowingly misrepresents
23 his or her qualifications for the purpose of obtaining an
24 alcoholic beverage from such licensee shall be equally
25 guilty with said licensee and shall upon conviction thereof

APPENDIX I
SAMPLE — REFERENDUM

1 be subject to the penalty provided in 45-5-624; provided,
2 however, that nothing herein contained shall be construed
3 as authorizing or permitting the sale of an alcoholic
4 beverage to any person in violation of any federal law.

5 (4) It shall be further mandatory under the provisions
6 of this code that all licensees display in a prominent place
7 in their premises a placard as issued by the department
8 stating fully the consequences for violations of the
9 provisions of this code by persons under the age of ~~19~~ 21
10 years."

11 NEW SECTION. **Section 2. Effective date.** If approved by
12 the electorate, section 1 of this act is effective January
13 1, 1995.

14 NEW SECTION. **Section 3. Submission to electorate.** The
15 question of whether section 1 of this act will become
16 effective shall be submitted to the qualified electors of
17 Montana at the general election to be held in November 1994
18 by printing on the ballot the full title of this act* and
19 the following:

20 [] FOR raising the legal drinking age to 21.

21 [] AGAINST raising the legal drinking age to 21.

22 -End-

*Note: The guidelines pertaining to brackets (see sec-
tions 3-2 and 4-12) do not apply to noncodified sections
of ballot issues.

113

LC 0014/01

24 (3) Each member of the board shall hold office for his
25 term and until his successor is duly appointed by the

APPENDIX J
SAMPLE – BILL AMENDING INITIATIVE

1 governor."

2 NEW SECTION. **Section 2. Effective date.** [This act] is
3 effective on passage and approval.

4 - End -

115

LC 0015/01

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING AN AMENDMENT
5 TO RULE 4.6.607, ADMINISTRATIVE RULES OF MONTANA, TO PERMIT
6 A HUSBAND AND WIFE FILING SEPARATE INCOME TAX RETURNS TO
7 DIVIDE THE INCOME FROM A JOINT VENTURE OR PARTNERSHIP
8 ACTIVELY MANAGED BY BOTH; AND PROVIDING AN IMMEDIATE
9 EFFECTIVE DATE."

11 WHEREAS, income tax regulations promulgated by the
12 Department of Revenue now provide that net income from a
13 business operated jointly by a husband and wife, such as a
14 farm or ranch, is the income of only one spouse unless the
15 spouses file as a partnership on their federal income tax
16 return; and

17 WHEREAS, this rule is arbitrary in that it obliges married
18 taxpayers to forego either the federal tax advantages of
19 joint filing or the state tax advantages of separate filing;
20 and

21 WHEREAS, this rule is against public policy in that is
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

25

APPENDIX K
SAMPLE — BILL GENERALLY DIRECTING
AMENDMENT TO ADMINISTRATIVE RULE

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 ~~NEW SECTION.~~ **Section 1. Department to amend rule.** The
3 department of revenue shall amend Rule 4.6.607, Administra-
4 tive Rules of Montana, to delete the requirement that
5 spouses dividing income from a joint venture must organize
6 a bona fide partnership and file federal income tax returns
7 as such and to provide that spouses may allocate the income
8 from a jointly managed business according to their respec-
9 tive contributions of time, labor, and capital to the
10 business. The amendment must be made to apply to tax years
11 beginning after December 31, 1992.

12 ~~NEW SECTION.~~ **Section 2. Effective date.** [This act] is
13 effective on passage and approval.

14 -End-

53rd Legislature

LC 0016/01

1 BILL NO. _____

2 INTRODUCED BY _____

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE TAX
5 CREDIT FOR NEW OR EXPANDING MANUFACTURERS; DIRECTING THE
6 AMENDMENT OF RULE 42.23.511, ADMINISTRATIVE RULES OF
7 MONTANA; REPEALING RULE 42.23.517, ADMINISTRATIVE RULES OF
8 MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
9 APPLICABILITY DATE."

10

11 WHEREAS, the law allows a tax credit for new or expanding
12 corporations; and

13 WHEREAS, the Legislature, in passing that law, intended
14 to limit the law to manufacturers only and to give a tax
15 credit to any form of manufacturing business (such as a
16 sole proprietorship or partnership) and not just to
17 corporations.

18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** The Department of Revenue shall amend Rule
21 42.23.511, Administrative Rules of Montana, to read:

22 "42.23.511 CREDIT FOR NEW OR EXPANDING CORPORATIONS
23 MANUFACTURERS (1) Sections 15-31-124 through 15-31-127,
24 MCA, as amended, allow a tax credit equal to 1% of wages
25 paid by a new or expanding corporation manufacturer. Any

**SAMPLE – BILL DIRECTING SPECIFIC AMENDMENT OF
ADMINISTRATIVE RULE & REPEALING ADMINISTRATIVE RULE**

1 ~~corporation manufacturer~~ seeking credit under 15-31-124
2 through 15-31-127, MCA, shall conclusively demonstrate its
3 eligibility to the department. The department's decision
4 shall be final.

5 (2) Each ~~corporation manufacturer~~ seeking a credit under
6 15-31-124 through 15-31-127, MCA, shall show:

7 (a) ~~that it is a corporation preregistered pursuant to~~
8 ~~Title 35, chapter 1, MCA, as amended the manufacturer is~~
9 ~~preregistered as a valid existing business under the laws~~
10 ~~of this state;~~

11 (b) that it was registered for the first time during the
12 tax year for which the first credit is claimed or that the
13 industry meets the definition of expanding per 15-31-124,
14 MCA, as amended; and

15 (c) ~~that the corporation is engaged in manufacturing the~~
16 ~~applicant is a manufacturer~~ as that term is defined in
17 15-31-124, MCA, ~~and~~

18 ~~(d) that the product manufactured is one, which prior~~
19 ~~to its production by the corporation, was not then currently~~
20 ~~produced in this state."~~

21 NEW SECTION. **Section 2. Repealer.** Rule 42.23.517, Ad-
22 ministrative Rules of Montana, is repealed.

23 NEW SECTION. **Section 3. Effective date – applicability.**
24 [This act] is effective on passage and approval and applies
25 to tax years beginning after December 31, 1993.

APPENDIX L
SAMPLE — JOINT RESOLUTION REQUESTING
ADOPTION OF ADMINISTRATIVE RULE

119

53rd Legislature

LC 0017/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE
6 ADOPTION OF A RULE BY THE DEPARTMENT OF FISH, WILDLIFE, AND
7 PARKS PROVIDING FOR THE EXAMINATION OF APPLICANTS FOR
8 OUTFITTERS' LICENSES AT LOCATIONS OUTSIDE HELENA.

9

10 WHEREAS, the Department of Fish, Wildlife, and Parks
11 licenses outfitters by examining applicants for licenses
12 at its Helena offices; and

13 WHEREAS, the Department could examine applicants at its
14 regional headquarters with little administrative incon-
15 venience and by so doing would relieve the license
16 applicants of an unwarranted burden.

17

18 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
19 OF REPRESENTATIVES OF THE STATE OF MONTANA:

20 That the Fish, Wildlife, and Parks Commission be requested
21 to immediately initiate proceedings to adopt a rule setting
22 out procedures for the examination of applicants for
23 outfitters' licenses at the various regional headquarters
24 of the Department of Fish, Wildlife, and Parks.

25

-End-

APPENDIX L
SAMPLE — JOINT RESOLUTION REQUESTING
AMENDMENT OF ADMINISTRATIVE RULE

121

53rd Legislature

LC 0018/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
6 AMENDMENT TO RULE 4.6.607, ADMINISTRATIVE RULES OF MONTANA,
7 TO PERMIT A HUSBAND AND WIFE FILING SEPARATE INCOME TAX
8 RETURNS TO DIVIDE THE INCOME FROM A JOINT VENTURE OR
9 PARTNERSHIP ACTIVELY MANAGED BY BOTH.

10

11 WHEREAS, income tax regulations promulgated by the
12 Department of Revenue now provide that net income from a
13 business operated jointly by a husband and wife, such as a
14 farm or a ranch, is the income of only one spouse unless
15 the spouses file as a partnership on their federal income
16 tax return; and

17 WHEREAS, this rule is arbitrary in that it obliges married
18 taxpayers to forego either the federal tax advantages of
19 joint filing or the state tax advantages of separate filing;
20 and

21 WHEREAS, this rule is against public policy in that it
22 fails to recognize the equal contributions of both spouses
23 to the management of many farms, ranches, small businesses,
24 and firms.

25

APPENDIX L
SAMPLE – JOINT RESOLUTION REQUESTING
AMENDMENT OF ADMINISTRATIVE RULE

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
2 OF REPRESENTATIVES OF THE STATE OF MONTANA:

3 That the Department of Revenue be strongly urged to
4 proceed within 30 days to amend Rule 4.6.607, Administrative
5 Rules of Montana, to delete the requirement that spouses
6 dividing income from a joint venture must organize a bona
7 fide partnership and file federal income tax returns as
8 such and to provide that spouses may allocate the income
9 from a jointly managed business according to their respec-
10 tive contributions of time, labor, and capital to the
11 business.

12

-End-

APPENDIX M
SAMPLE – SIMPLE RESOLUTION

123

53rd Legislature

LC 0019/01

1 HOUSE RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE
5 OF MONTANA THAT WHENEVER PRACTICABLE ITS MEMBERS SHALL
6 SALVAGE USED PAPER FOR RECYCLING.

7

8 WHEREAS, the Legislature and offices of state government
9 use large amounts of paper each year; and

10 WHEREAS, this Legislature, this state, and this nation
11 are concerned about the shortage of paper; and

12 WHEREAS, the efficient use of forest products is of great
13 concern to all our citizens; and

14 WHEREAS, this House of Representatives desires to make a
15 concerted effort toward a continual program of salvaging
16 paper products for reuse; and

17 WHEREAS, a new industry in the State of Montana has
18 indicated its willingness to cooperate with an immediate
19 program of recycling.

20

21 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES
22 OF THE STATE OF MONTANA:

23 That the members of this House of Representatives shall
24 immediately institute a used-paper recycling program by
25 depositing used paper in the proper receptacles.

APPENDIX M

SAMPLE – SIMPLE RESOLUTION

1 BE IT FURTHER RESOLVED, that the Chief Clerk of the House
2 shall contact the proper authorities and make all arrange-
3 ments necessary to carry out this program.

4 -End-

APPENDIX N
SAMPLE — JOINT RESOLUTION

125

53rd Legislature

LC 0020/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS
6 TO DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

7

8 WHEREAS, hundreds of Montanans lose their lives in traffic
9 accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

13

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in
18 the daytime to deter head-on collisions on the open highway.

19 BE IT FURTHER RESOLVED, that the Secretary of State send
20 copies of this resolution to the publisher of each newspaper
21 in the state.

22 BE IT FURTHER RESOLVED, that this resolution, etc.

23

-End-

APPENDIX N
SAMPLE — JOINT RESOLUTION
(using outline form)

127

53rd Legislature

LC 0021/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING MOTORISTS
6 TO DRIVE WITH THEIR HEADLIGHTS ON DURING THE DAYTIME.

7

8 WHEREAS, hundreds of Montanans lose their lives in traffic
9 accidents each year; and

10 WHEREAS, one out of every five traffic accidents on the
11 open highway is the result of a head-on collision; and

12 WHEREAS, etc.

13

14 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
15 OF REPRESENTATIVES OF THE STATE OF MONTANA:

16 (1) That members of the motoring public of Montana be
17 encouraged to drive with their headlights on low beam in
18 the daytime to deter head-on collisions on the open highway.

19 (2) That copies of this resolution be sent by the
20 Secretary of State to the publisher of each newspaper in
21 the state.

22 (3) That this resolution, etc.

23

-End-

APPENDIX N
SAMPLE – JOINT RESOLUTION REQUESTING
INTERIM STUDY

129

53rd Legislature

LC 0022/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN
6 INTERIM STUDY OF THE ALTERNATIVE WAYS AND EFFECTS OF
7 AUTHORIZING BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT
8 UNIONS TO BRANCH WITHIN THE STATE; AND REQUIRING A REPORT
9 OF THE FINDINGS OF THE STUDY TO THE 54TH LEGISLATURE.

10

11 WHEREAS, it is apparent that a great number of Montana's
12 citizens are interested in authorizing banks, savings and
13 loan associations, and credit unions to establish and
14 maintain branch facilities in the state; and

15 WHEREAS, the law prohibits banks from maintaining a branch
16 facility; and

17 WHEREAS, there are various alternative methods for
18 authorizing branching; and

19 WHEREAS, the Legislature has not studied the need for
20 branching in the state; and

21 WHEREAS, in order to best serve the public, a thorough
22 study of all the effects and alternative ways of authorizing
23 banks, savings and loan associations, and credit unions to
24 branch should be made.

25

APPENDIX N
SAMPLE — JOINT RESOLUTION REQUESTING
INTERIM STUDY

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
2 OF REPRESENTATIVES OF THE STATE OF MONTANA:

3 That an appropriate interim committee be assigned to
4 study:

5 (1) the need for banks, savings and loan associations,
6 and credit unions to branch within the state;

7 (2) the various alternative methods for authorizing
8 branching; and

9 (3) the effects of authorizing banks, savings and loan
10 associations, and credit unions to branch within the state.

11 BE IT FURTHER RESOLVED, that the interim committee report
12 the findings of the study to the 54th Legislature and present
13 options for legislative consideration if the committee
14 determines that options are necessary.

15 -End-

APPENDIX N
SAMPLE – JOINT RESOLUTION AMENDING JOINT RULES

131

53rd Legislature

LC 0023/01

1 _____ JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA AMENDING JOINT RULE
6 40-70 OF THE LEGISLATURE TO PROVIDE THAT A BILL EARMARKING
7 FUNDING MAY NOT BE CONSIDERED UNLESS THE FUNDS ARE USED FOR
8 THOSE FROM WHOM THEY ARE DERIVED OR UNLESS THE CONSTITUTION
9 PROVIDES FOR THE EARMARKING; AND PROVIDING AN EFFECTIVE
10 DATE.

11

12 BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES
13 OF THE STATE OF MONTANA:

14 (1) That Joint Rule 40-70 be amended to read:

15 **"40-70. Bills with same purpose – vetoes.** (1) A bill
16 may not be introduced or received in a house after that
17 house, during that session, has finally rejected a bill
18 designed to accomplish the same purpose, except with the
19 approval by the Rules Committee of the house in which the
20 bill is offered for introduction or reception.

21 (2) Failure to override a veto does not constitute final
22 rejection.

23 (3) It is not in order in either house to consider any
24 bill providing for the earmarking of funding for the purpose
25 of defraying particular costs of an agency, program, or

SAMPLE -- JOINT RESOLUTION AMENDING JOINT RULES

1 function unless the funds are to be used for those from
2 whom they are derived or are earmarked by the Montana
3 Constitution. The determination of whether earmarking in a
4 bill is permissible must be made by the Rules Committee of
5 the house considering the bill."

6 (2) That this resolution be effective January 1, 1994.

7 -End-

133

LC 0024/01

2 INTRODUCED BY _____

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING SALES OF
5 NEW DRUGS; AND AMENDING SECTION 50-31-105, MCA."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Strike everything after the enacting clause and insert:

10 NEW SECTION. **Section 1.** Sale or donation of new drug
11 **unlawful - exceptions.** Except as provided in [section 2],
12 a person may not sell, offer for sale, hold for sale, or
13 give away a new drug unless:

14 (1) a federal application has been approved;

15 (2) the drug is not subject to federal law; or

16 (3) an application has been filed with the department
17 containing:

18 (a) a summary of the conclusions drawn from investigation
19 of the drug;

20 (b) a list of the substances of which the drug is
21 composed; and

22 (c) a sample of the label proposed as identification for
23 the drug, which must not:

24 (i) be false or misleading; or

25 (ii) contain a name used by a registered drug unless:

APPENDIX O
SAMPLE - SUBSTITUTE BILL

1 (A) permission has been granted and a license has been
2 obtained; or

3 (B) the name is for temporary use.

4 NEW SECTION. **Section 2. Nonapplication.** [Section 1] does
5 not apply to any drug subject to 50-31-102 if the drug:

6 (1) is commercially sold in the United States; and

7 (2) has been tested by the department of health and
8 environmental sciences.

9 **Section 3.** Section 50-31-105, MCA, is amended to read:

10 **"50-31-105. Hallucinogenic drugs - prohibitions.** It
11 ~~shall be is~~ unlawful for ~~any a~~ person to manufacture ~~any a~~
12 hallucinogenic drug."

13 -End-

APPENDIX P
SAMPLE BILL FORM — COMPLETE

135

	53rd Legislature	LC 0025/01
BILL IDENTIFICATION (Designation & No.)	1 _____ BILL NO. _____	
(Sponsor)	2 INTRODUCED BY _____	
(State agency or committee requestor, if any)	3 BY REQUEST OF _____	
	4	
TITLE	5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING	
	6 A SAMPLE BILL FOR THE BILL DRAFTING MANUAL;	
	7 AMENDING SECTION 2-17-301, MCA; REPEALING	
	8 SECTIONS 27-18-101, 27-18-102, 27-18-103, 45-	
	9 5-102, AND 45-5-601, MCA; AND PROVIDING AN	
	10 EFFECTIVE DATE, A RETROACTIVE APPLICABILITY	
	11 DATE, AND A TERMINATION DATE."	
	12	
PREAMBLE (optional)	13 WHEREAS, it is necessary to draft a composite	
	14 bill containing unrelated sections in order to	
	15 provide examples of various bill parts and the	
	16 format used in drafting, amending, or repealing	
	17 statutes.	
	18	
STATEMENT OF INTENT (optional)	19 STATEMENT OF INTENT	
	20 A statement of intent is required for this	
	21 bill in order to provide a guideline on form.	
	22 In [section 7] and 56-2-401, the department of	
	23 legislative services grants to the board of	
	24 bill drafting general rulemaking authority for	
	25 the following punctuation:	

APPENDIX P
SAMPLE BILL FORM – COMPLETE

1 (1) Periods are used at the end of sentences
2 and in outlining when both the introduction and
3 the following material are freestanding
4 thoughts.

5 (2) Semicolons are used in clauses that are:

6 (a) dependent; and

7 (b) often confusing.

8 (3) Capitalization follows rules used in
9 the Montana Code Annotated.

10

ENACTING CLAUSE
(mandatory)

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE
12 OF MONTANA:

BODY
(Short title)

13 NEW SECTION. **Section 1. Short title.** [Sec-
14 tions 1 through 4 and 6 through 8] may be cited
15 as the "Bill Sample Act".

(Purpose)

16 NEW SECTION. **Section 2. Purpose.** The purpose
17 of [sections 1 through 4 and 6 through 8] is
18 to create a bill, the structure of which may
19 be used as an example of correct style and form
20 by attorneys and other bill drafters.

(Definitions)

21 NEW SECTION. **Section 3. Definitions.** As used
22 in [sections 1 through 4 and 6 through 8], the
23 following definitions apply:

24 (1) "Code" means the Montana Code Annotated.

25 (2) "Department" means the department of
health and environmental sciences as provided

APPENDIX P
SAMPLE BILL FORM – COMPLETE

137

1 for in 2-15-2101.

2 (3) "Montana constitution" or "constitu-
3 tion" means The Constitution of the State of
4 Montana.

5 (4) "Recodify" means to compile, arrange,
6 rearrange, and prepare the code for republica-
7 tion.

(Basic
provisions)

8 NEW SECTION. **Section 4. Department head.**

9 Each department head shall supervise the
10 functions vested in the department.

(Amendatory
material)

11 **Section 5.** Section 2-17-301, MCA, is amended
12 to read:

13 **"2-17-301. Supervision of mailing**
14 **facilities.** The ~~controller department~~ shall
15 maintain and supervise the central mailing
16 facilities."

(New material)

17 NEW SECTION. **Section 6. Code commissioner**
18 **office created.** The office of code commissioner
19 is created within the legal services division
20 of the legislative council.

21 NEW SECTION. **Section 7. Sale or donation of**
22 **new drug unlawful – exceptions – rulemaking**
23 **authority.** A person may not sell, offer for
24 sale, hold for sale, or give away a new drug
25 unless:

APPENDIX P
SAMPLE BILL FORM – COMPLETE

(Outline form)

1 (1) a federal application has been approved;
2 (2) the drug is not subject to federal law;
3 or

4 (3) an application has been filed with the
5 department containing:

6 (a) a summary of the conclusions drawn from
7 investigation of the drug;

8 (b) a list of the substances of which the
9 drug is composed; and

10 (c) a sample of the label proposed as
11 identification for the drug, which must not:

12 (i) be false or misleading; or

13 (ii) contain a name used by a registered drug
14 unless:

15 (A) permission has been granted and a
16 license has been obtained; or

17 (B) the name is for temporary use.

18 (4) The department shall make rules regard-
19 ing the dispensation of new drugs.

(Penalty)

20 NEW SECTION. **Section 8. Penalty.** A person
21 convicted of violating 45-2-102 shall be fined
22 not more than \$500 or be imprisoned in the
23 county jail for a term not to exceed 6 months,
24 or both.

(Repealer)

25 NEW SECTION. **Section 9. Repealer.** Sections

APPENDIX P
SAMPLE BILL FORM – COMPLETE

139

1 27-18-101, 27-18-102, 27-18-103, 45-5-102, and
2 45-5-601, MCA, are repealed.

(Appropriation)

3 NEW SECTION. **Section 10. Appropriation.**
4 There is appropriated \$1 from the general fund
5 to the department of revenue for each of the
6 fiscal years 1994 and 1995.

(Name change)

7 NEW SECTION. **Section 11. Name change – direc-**
8 **tions to code commissioner.** Wherever the name
9 "fish and game commission", meaning the com-
10 mission established in 2-15-3402, appears in
11 the Montana Code Annotated or in legislation
12 enacted by the 1993 legislature, the code
13 commissioner is directed to change the name to
14 "fish, wildlife, and parks commission".

(Codification
instruction)

15 NEW SECTION. **Section 12. Codification in-**
16 **struction.** (1) [Sections 1 through 3 and 6
17 through 8] are intended to be codified as an
18 integral part of Title 2, chapter 6, part 7,
19 and the provisions of Title 2, chapter 6, part
20 7, apply to [sections 1 through 3 and 6 through
21 8].
22 (2) [Section 4] is intended to be codified
23 as an integral part of Title 2, chapter 5, part
24 1, and the provisions of Title 2, chapter 5,
25 part 1, apply to [section 4].

APPENDIX P
SAMPLE BILL FORM — COMPLETE(Coordination
instruction)

1 NEW SECTION. **Section 13. Coordination in-**
2 **struction.** If ____ Bill No. ____ [LC 1249] is
3 passed and approved and if it includes a section
4 that amends 56-4-401, then [section 5 of this
5 act], amending 2-17-301, is void.

(Saving
clause)

6 NEW SECTION. **Section 14. Saving clause.**
7 [This act] does not affect rights and duties
8 that matured, penalties that were incurred, or
9 proceedings that were begun before [the effec-
10 tive date of this act].

(Severability
clause)

11 NEW SECTION. **Section 15. Severability.** If a
12 part of [this act] is invalid, all valid parts
13 that are severable from the invalid part remain
14 in effect. If a part of [this act] is invalid
15 in one or more of its applications, the part
16 remains in effect in all valid applications
17 that are severable from the invalid applica-
18 tions.

OR

(Nonseverability
clause)

19 NEW SECTION. **Section 15. Nonseverability.** It
20 is the intent of the legislature that each part
21 of [this act] is essentially dependent upon
22 every other part, and if one part is held
23 unconstitutional or invalid, all other parts
24 are invalid.

(Extraordinary
vote)

25 NEW SECTION. **Section 16. Three-fourths vote**

APPENDIX P
SAMPLE BILL FORM — COMPLETE

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1 **required.** Because [section 2] appropriates
2 money from the coal severance tax trust fund,
3 Article IX, section 5, of the Montana constitu-
4 tion requires a vote of three-fourths of the
5 members of each house of the legislature for
6 passage.

OR

7 NEW SECTION. **Section 16. Two-thirds vote re-**
8 **quired.** Because [section 2] limits governmental
9 liability, Article II, section 18, of the
10 Montana constitution requires a vote of two-
11 thirds of the members of each house of the
12 legislature for passage.

(Retroactive
applicability)

13 NEW SECTION. **Section 17. Retroactive ap-**
14 **plicability.** [This act] applies retroactively,
15 within the meaning of 1-2-109, to occurrences
16 after December 31, 1992.

OR

17 NEW SECTION. **Section 17. Retroactive ap-**
18 **plicability.** [This act] applies retroactively,
19 within the meaning of 1-2-109, to tax years
20 beginning after December 31, 1992.

(Applicability)

21 NEW SECTION. **Section 17. Applicability.**
22 [This act] applies to proceedings begun after
23 December 31, 1993.

(Effective
date)

24 NEW SECTION. **Section 18. Effective dates.**
25 (1) [Sections 1 through 4 and this section] are

APPENDIX P
SAMPLE BILL FORM – COMPLETE

1 effective on passage and approval.

2 (2) [Sections 6 through 8] are effective
3 December 1, 1993.

OR

4 NEW SECTION. **Section 18. Effective date.**

5 [This act] is effective December 1, 1993.

(Termination)

6 NEW SECTION. **Section 19. Termination.** [This
7 act] terminates October 1, 1996.

8 -End-

See section 4-2 for listing of codified and
noncodified sections from the bill body.

REQUIRED

Date _____

Drafter

[illegible]

FISCAL IMPACT: _____Appropriation _____Fiscal Note Required _____Revenue Bill _____Interim Study

Change short title (show wording above)

Cancel

Release from cancel

Hold

Release from hold

Add new subjects _____

Delete current subjects

Redo

Change requestor:

Change drafter

Change by request of

Other (please explain) _____

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LC

BILL NO.

INTRODUCED BY _____

BILL DRAFTER

Bill
Section No.

Statute No.
Suggested

[illegible]

APPENDIX S
BILL DRAFTER CHECKLIST

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Noncouncil
Drafter _____

Phone _____

Note: Each question on checklist calls for "yes",
"no", or "N/A" (not applicable) response. Section
number references are to Bill Drafting Manual.

Conformity with state and federal Constitutions
considered (section 1-2)? _____

Existing Montana statutes reviewed to avoid
conflicts, duplication, or confusion (section 1-3)? _____

Note attached indicating source of draft (e.g.,
model act, other state statute, etc.) (section 1-6)? _____

Internal references checked using internal
reference report (section 1-7)? _____

Fiscal note required (section 6-1)? _____

Fiscal impact requiring July 1 effective date
(section 6-1)? _____

Statement of legislative intent required
(section 6-3, Appendix P)? _____

Code placement and applicability considered;
codification instruction included in draft or
suggested assignment of statute numbers attached
(section 4-19, Appendix R)? _____

Title contains one subject clearly expressed
(section 4-4)? _____

Short bill title attached (section 4-4(8),
Appendix Q)? _____

If state agency bill, "By Request" line included
(section 4-3(4))? _____

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500 copies of this public document were published at an estimated cost of \$4.60 per copy, for a total cost of \$2,300.00 which includes \$2,300.00 for printing and \$.00 for distribution.